Supreme Court of the United States.

October Term, 1896.

TERM NO. 570,
CASE NO. 16,349.

S. H. WILLIAMS, Treasurer of the Town of Glastonbury, Hartford County, State of Connecticut,
Plaintiff in Error,

vs.

ARTHUR F. EGGLESTON, Attorney for the State of Connecticut,
Defendant in Error.

NOTICE OF MOTION TO DISMISS OR AFFIRM.

To Honorable John R. Buck, Hartford, Connecticut, Counsel for Plaintiff in Error:

You are hereby notified that the within motion to dismiss the writ of error or affirm the judgment in the above-entitled case, together with the brief and argument of counsel for defendant in error, annexed hereto, in support of said motion, will be presented to the Supreme Court of the United States, on Monday, the 26th day of April, 1897, at the convening of said court.

LEWIS SPERRY,
GEORGE P. McLEAN,
AUSTIN BRAINARD,
Counsel for Defendant in Error.

Supreme Court of the United States.

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TERM NO. 570,

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S. H. WILLLIAMS, Treasurer of the Town of Glastonbury, Hartford County, State of Connecticut,

Plaintiff in Error,

vs.

ARTHUR F. EGGLESTON, Attorney for the State of Connecticut,

Defendant in Error.

SERVICE OF MOTION.

I hereby acknowledge due and legal service of the within motion to dismiss the writ of error or affirm the judgment in the above-entitled case, and I also hereby acknowledge receipt of copy of said motion, together with brief and argument of counsel for defendant in error, in support of said motion.

Dated at Hartford the 1st day of April, 1897.

(Signed) JOHN R. BUCK,

Attorney for S. H. Williams, Treas.,

Plaintiff in Error.

Supreme Court of the United States.

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TERM NO. 570,

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S. H. WILLIAMS, Treasurer of the Town of Glastonbury, Hartford County, State of Connecticut,

Plaintiff in Error,

vs.

ARTHUR F. EGGLESTON, Attorney for the State of Connecticut,

Defendant in Error.

MOTION TO DISMISS OR AFFIRM.

And now comes the defendant in error in the above-entitled case, and moves the court to dismiss the writ of error therein for the following reasons:

1st. This court has no jurisdiction of the case.

2d. There is no Federal question necessarily arising on the record filed in this court, and no Federal question actually decided by the Supreme Court of Errors of the State of Connecticut, or necessarily involved in the judgment by it rendered.

3d. The allegation of two Federal questions made by the plaintiff in error, as appears of record, is not accompanied by

any allegations of fact from which this court can infer the existence of any Federal question.

4th. The question involved in the decision of the State Court related to the construction of a statute and the constitution of the State of Connecticut, both of which questions were decided adversely to the plaintiff in error.

5th. The question decided by the State court related to the power of the Legislature of Connecticut over the municipal corporation of Connecticut under the constitution of that State, as appears of record; and the decision of the court of last resort of the State of Connecticut upon that question is final, and no Federal question was involved in its decision.

Or to affirm the judgment of the Supreme Court of Errors of the State of Connecticut herein, on the ground:

1st. Although the record may show that this court has jurisdiction, it is manifest that the writ of error was taken only for delay.

2d. That although the record may show that this court has jurisdiction, the question on which the jurisdiction depends is so frivolous as not to need further argument.

3d. That although the record may show that a Federal question was decided by the State court adversely to the plaintiff in error, the record also shows that other questions not Federal in their nature were also decided adversely to the plaintiff in error; and the decision of the latter questions is sufficient to sustain the judgment of the State court.

4th. That although the record may show that a Federal question was actually decided by the State court, the decision

of a Federal question was not necessarily involved in the decision of the State court.

Dated at Hartford, Connecticut, April 1, 1897.

LEWIS SPERRY,
GEORGE P. McLEAN,
AUSTIN BRAINARD,
Counsel for Plaintiff in Error.

STATEMENT.

In the year 1887 the Hartford Bridge Company of Hartford, Connecticut, was maintaining a toll bridge across the Connecticut River at Hartford, and in connection therewith a causeway in the town of East Hartford. In that year the Legislature of the State of Connecticut passed an Act providing for the condemnation of said bridge and causeway under the law of eminent domain, with an assessment of damages to said Bridge Company for the condemnation of its property and franchises, and an award of benefits to such towns as might be found to be especially benefited. Record, page 60, Exhibit "X."

Proceedings were duly instituted pursuant to said Act for the condemnation of said bridge and causeway, and on June 10, 1889, the Superior Court for Hartford County, wherein said proceedings were pending, passed a final decree, assessing damages to the Hartford Bridge Company in the sum of two hundred and ten thousand dollars ($210,000), and awarding said sum as benefits to five towns found to be especially benefited, to wit: Hartford, East Hartford, Glastonbury, Manchester, and South Windsor. Record, page 9, Exhibit "A."

The first selectman of each of said several five towns became, *ex officio*, a member of a board, which said board was constituted "a body politic and corporate, by the name of The Board for the Care of Highways and Bridges across the Connecticut River in Hartford County." Record, page 62, Sec. 7.

By an Act approved June 29, 1893, the Legislature provided that the State of Connecticut should thereafter maintain said bridges and highways, and provided further that the Governor should appoint three commissioners, with the consent of the Senate, which commissioners should constitute a board for the care, maintenance, and control of said bridges

and highways. (Public Acts of Connecticut, 1893, Chapter CCXXXIX, page 395.)

As this Act is not set forth in the record, we quote it in full here, as follows:

"(Senate Bill No. 201.)

"Chapter CCXXXIX.

"An Act concerning the Hartford Bridge.

"Be it enacted by the Senate and House of Representatives in General Assembly convened:

"Section 1. The highways across the Connecticut River at Hartford, where the present bridges now are, as laid out and established in accordance with the provisions of Chapter CXXVI of the Public Acts of 1887, together with said bridges and the causeways and approaches appurtenant to and connected therewith, shall hereafter be maintained by the State of Connecticut at its expense.

"Sec. 2. The Governor, at the present session of the General Assembly, shall appoint three commissioners, with the consent of the Senate, one for the term of two years, one for the term of four years, and one for the term of six years, who shall constitute a board for the care, maintenance, and control of said highways and bridges, and, upon the expiration of their several terms of office, their successors shall be appointed in like manner for the term of six years from the time of appointment, and the expenses of repairing and maintaining said highways and bridges shall be incurred by said board of commissioners on behalf of the State, and shall be reported by said board, from time to time, to the comptroller of the State, who shall audit all bills for the same and draw his order, or orders, for the payment thereof on the treasurer of this State, by whom said orders shall be paid from the State treasury.

"Sec. 3. All causeways and other real estate used in connection with said bridges, or for the maintenance and protection of said causeways, shall be considered to be, under the provisions of this Act, as appurtenant to said bridges and highways across the same.

"Sec. 4. All acts and parts of acts inconsistent herewith are hereby repealed.

"Approved June 29, 1893."

Under this Act three commissioners were appointed, as therein provided, two of whom, George W. Fowler and Charles W. Roberts, under date of November 13, 1894, and by amendment under date of Jan. 14, 1895, executed a pretended contract in behalf of the State of Connecticut, party of the first part, and The Berlin Iron Bridge Company, party of the second part, for the construction of a new iron bridge in lieu of the old wooden bridge then standing, at a total cost of upwards of three hundred thousand dollars. Record, pp. 23-36, inclusive, Exhibit "I."

By Act approved May 24, 1895, the Legislature of the State of Connecticut repealed the Act of 1893, Chapter CCXXXIX, above referred to, and further provided that said five towns of Hartford, East Hartford, Glastonbury, Manchester, and South Windsor, should thereafter maintain said bridge and causeway. Record, p. 57, Exhibit "8."

Section 3 of said Act, approved May 24, 1895, provided that Hon. Dwight Loomis of Hartford and the comptroller and treasurer of the State should constitute a committee to hear and determine any legal claims, not to exceed forty thousand dollars, which might be presented within six months after the passage of said Act, arising under or by virtue of said contract with any party, and particularly with The Berlin Iron Bridge Company.

Section 4 provided that

> "If any such party or parties, particularly The Berlin Iron Bridge Company, shall not be satisfied with the decision of said commisssion, permission and authority is hereby given to such party or parties, particularly the said The Berlin Iron Bridge Company, at any time within three years from and after the passage of this Act, to commence and prosecute a suit or suits against the State of Connecticut, in the Superior Court for Hartford County, for any legal claim, debt, or demand arising under or by virtue of any valid contract made

and executed by said commission under and by the provisions of said Public Act of 1893, acting within the legal scope of their authority, with any party, and particularly with the said The Berlin Iron Bridge Company, or for the construction of any contract with said commissioners alleged by said plaintiff to be valid and binding upon the State of Connecticut, according to the ordinary procedure in civil actions in the State; and in any event, whether said contract shall be held valid or not, said The Berlin Iron Bridge Company shall be entitled to recover for all material furnished, and all expenses of every kind actually incurred under, in relation to, or in connection with said contract, including therein all legal and personal expenses." Record, pp. 58, 59.

Section 8 of said Act provides as follows:

"If any contract for the building of a bridge over the Connecticut River, between the towns of Hartford and East Hartford, alleged to have been made by said commissioners with The Berlin Iron Bridge Company, shall be declared valid and binding, upon any complaint brought for its construction as hereinbefore provided, then the comptroller is authorized and directed to carry out and complete said contract, according to the provisions thereof, and to employ a competent engineer to supervise the construction of such bridge, and to draw his order or orders upon the State treasurer for the same and for said cost of supervision; but nothing in this Act shall be construed as relieving the said towns of Hartford, East Hartford, Glastonbury, South Windsor, and Manchester, upon the passage of this Act, from the duty of maintaining and repairing the present and all other necessary bridges, causeways, and appurtenances, across said river, between said towns, or rebuilding, whenever necessary, such new bridge as may, under the provision of this section, be erected by the State. In case such new bridge shall be constructed at the expense of the State, as provided for in this section, the provision for the payment to said five towns of fifty per cent. of the taxes from street

railway companies using such new bridge annually for five years, shall not take effect, but ten per cent. of all such taxes shall annually be paid by the treasurer of the State, upon the order of the comptroller, to the treasurer of said towns, in proportion to the assessments made upon said towns, respectively, as aforesaid." Record, p. 59.

The Berlin Iron Bridge Company presented its claim to said commission, provided for under the Act of May 24, 1895, above referred to, and said commission awarded said Bridge Company, under date of December 7, 1895, twenty-seven thousand five hundred and twenty-six dollars ($27,526). Record, p. 50, Exhibit "9."

Under date of December 13, 1895, the directors of The Berlin Iron Bridge Company voted to accept said award so made by said commission in full of all claims and demands which it had against the State of Connecticut on account of said alleged contract, and voted to surrender said alleged contract to the State of Connecticut, and authorized Charles M. Jarvis, president of said company, to sign all necessary receipts, releases, and discharges. Record, p. 51, Ex. "10"; also p. 49.

Under date of December 13, 1895, The Berlin Iron Bridge Company received from the State of Connecticut said sum of twenty-seven thousand five hundred and twenty-six dollars ($27,526), and gave its receipt therefor, and surrendered said alleged contract to the State. Record, p. 52, Ex. "11;" also p. 49.

Record, page 50, Exhibit "9," Award of Commissioners to The Berlin Iron Bridge Company.

Record, page 51, Exhibit "10," Vote of Directors of The Berlin Iron Bridge Company to Accept Award of Commissioners.

Record, page 52, Exhibit "11," Release of The Berlin Iron Bridge Company to the State of Connecticut.

On May 17, 1895, said bridge was totally destroyed by fire. Record, p. 48.

By an Act approved June 28, 1895, the Legislature created said five towns of Hartford, East Hartford, Glastonbury, Manchester, and South Windsor a body politic and corporate, with power to sue and be sued under the name of the Connecticut River Bridge and Highway District, for the construction, reconstruction, care, and maintenance of a free public highway across the Connecticut River at Hartford, and the causeways and approaches appurtenant thereto, as described in the decree of the Superior Court for Hartford County, passed on the 10th day of June, 1889. Record, p. 52, Ex. " B."

By the second section of said Act, the Legislature appointed eight commissioners for said district: four from Hartford and one from each of the other towns in said district, with power to erect a new bridge along and upon said highway, to construct, raise, and widen the causeways and approaches appurtenant thereto, or a part of said highway, at the expense of said towns, at a cost not exceeding five hundred thousand dollars ($500,000).

It provided that vacancies in the Board of Commissioners should be filled by vote of the towns represented either in annual or special town meeting.

The Commissioners were authorized by Section Four of said Act that in order to raise means for the construction of a new bridge, or for the permanent improvement of said causeways and approaches, said commissioners might issue bonds to an amount not exceeding five hundred thousand dollars ($500,000).

Section Four of said Act provided that for the ordinary support and maintenance of said highway, said towns shall from time to time, upon the order of said Commissioners, pay such

further sums as said commissioners may determine, as the proportion of said towns under the provisions of this resolution, and said towns were authorized and directed to provide for such payments in the annual tax levy of said town.

By Section Seven of said Act it is provided that the orders of the said Commissioners shall be obligatory upon the several towns constituting said district, and such orders are made sufficient authority for the treasurer of each of said towns to pay to said Commissioners, or their treasurer, any sum required to be paid by the towns named in said order. And it is further provided in Section Seven that the orders of the Commissioners might be enforced in any court of competent jurisdiction by mandamus, or otherwise. Record, pp. 52 to 57, Ex. "B."

The Commissioners of the Connecticut River Bridge and Highway District, having expended five hundred dollars ($500) for the ordinary support and maintenance of said highway, passed a resolution, under date of September 14, 1895, apportioning the amount due from the several towns constituting said district, under the provisions of the Act approved June 28, 1895, and the amount so ascertained to be due from the treasurer of the town of Glastonbury, plaintiff in error, was fifteen dollars ($15). Record, p. 13, Exhibit "C."

Pursuant to said resolution, said Commissioners drew an order on the treasurer of the town of Glastonbury, plaintiff in error, and made demand for the payment of the same, and payment was refused. Record, p. 14.

Thereupon, said Commissioners, under date of October 16, 1895, presented a motion to the Honorable Superior Court for Hartford County, for an alternative writ of mandamus against said Williams, treasurer of said town of Glastonbury, which said motion was allowed by said court. Record, pp. 4 to 8, inclusive.

Plaintiff in error answered to said alternative writ of mandamus that by the Public Acts of 1893, Chapter 239, the State of Connecticut had assumed the cost of maintenance of said bridge and highway (Record, p. 15), and that the State of Connecticut had entered into a contract with The Berlin Iron Bridge Company for the construction of a bridge at the point in question (Record, p. 16); that the Act of the General Assembly of Connecticut, approved May 24, 1895, repealing the Act approved June 29, 1893, under which the State of Connecticut had assumed the expense of maintenance of said bridge and the causeways appurtenant thereto, and further providing for the liquidation or execution of said contract, if such it was, was in violation of the Constitution of the United States, Section Ten, Article One, because it impaired the obligation of said alleged contract (Record, p. 18); and that the order of the Commissioners drawn upon the plaintiff in error, treasurer as aforesaid, for said sum of fifteen dollars ($15), was in violation of the Constitution of the United States, Section Ten, Article One, thereof; that said Act approved May 24, 1895, and the order of said Commissioners, dated September 14, 1895, was in violation of the Constitution of the State of Connecticut, Sections One and Eleven of the first Article thereof; that said bridge and highway are wholly outside of the limits of the town of Glastonbury (Record, p. 18); and that to require said town of Glastonbury to contribute to the maintenance of said bridge and causeways was in violation of the Constitution of the United States, particularly Article Fourteen of the amendments thereof.

The Commissioners, defendants in error, replied, admitting the execution of said alleged contract, but denied that said alleged contract was, in fact, a valid contract, or in any way binding upon the State of Connecticut, and denied that the Commissioners appointed under the Act of 1893, Chapter 239, had power to bind the State of Connecticut by said pretended contract (Record, pp. 37, 38); and further replied that

said alleged contract had been discharged, liquidated, and surrendered by said Berlin Iron Bridge Company to the State of Connecticut (Record, pp. 37, 38, 39); and further alleged that the liability of the town of Glastonbury to contribute to the maintenance of said bridge and highway had been judicially determined and adjudged by the decree of the Superior Court for Hartford County, June 10, 1889 (Record, pp. 40, 41); and that it had been finally adjudged and determined by said decree that said town of Glastonbury was especially benefited by the layout and establishment of said highway as set forth in said decree (Record, pp. 41, 42).

The alternative writ of mandamus was issued October 16, 1895. (Record, p. 6.)

The defendant made return to the alternative writ of mandamus November 25, 1895. (Record, pp. 15 to 22, inclusive.) In this return the defendant set up the alleged contract between the State of Connecticut and The Berlin Iron Bridge Company as a part of his defense.

The relators replied to this defense under date of January 27, 1896 (Record, pp. 37-43, inclusive), and alleged in their reply that "the alleged contract between the State of Connecticut and The Berlin Iron Bridge Company, referred to as Exhibit "I," in paragraph 6 of the defendant's return, has since the filing of said return by the defendant been discharged, canceled, and surrendered to the State of Connecticut by The Berlin Iron Bridge Company; and the State of Connecticut has been released and discharged by the said The Berlin Iron Bridge Company from any and all obligations and claims of every name and nature which existed at the time of said release or might thereafter exist under or by virtue of said alleged contract." (Record, p. 38, paragraph 13.)

The relators, defendants in error, also denied the validity of this pretended contract for the reasons as set forth at length in paragraph 14. (Record, p. 39.)

The respondent below in his rejoinder to relators' reply demurred to this reply, among other reasons, "because the rights of this respondent as they existed under the laws of the State of Connecticut, and of the United States, at the date of the commencement of this action, cannot be altered or varied by any transactions, agreements, or arrangements between the State of Connecticut and The Berlin Iron Bridge Company, since the date of the commencement of this action and of the respondent's return." (Record, p. 44.)

The trial court below overruled the demurrers filed by respondent. Judgment file, Record, p. 47.

The Supreme Court of Connecticut affirmed the judgment of the trial court and held that "in mandamus proceedings matters occurring after the suit is brought can be properly considered in determining whether the writ shall be made peremptory." (Record, p. 83.)

On April 10, 1896, the Superior Court for Hartford County, wherein said matter was pending, passed judgment, *pro forma*, in favor of the relators, defendants in error. (Record, p. 47.)

From that judgment the respondent, plaintiff in error, appealed to the Supreme Court of Errors of the State of Connecticut, to the term thereof holden in Hartford on the first Tuesday of May, 1896, and assigned his several reasons of appeal. (Record, pp. 63 to 66, inclusive.)

A majority of the Supreme Court of Errors of the State of Connecticut affirmed the judgment below as appears at length by the opinion of the majority of the court. (Record, pp. 72 to 85, inclusive.) See also State, ex rel. Bulkeley et al., vs. Williams, Treasurer, 68 Conn., 131.

Upon that judgment plaintiff in error brings his writ of error and makes assignment of errors as follows:

"The Court erred:

"1st. In holding that the contract of November 13, 1894, was not a valid contract between the State of Connecticut and The Berlin Iron Bridge Company (as set forth in paragraph sixth of respondent's return), at the time of the approval of the Act of May 24, 1895.

"2d. In holding that the temporary bridge constructed by The Berlin Iron Bridge Company, as set forth in paragraphs 7, 9, and 10 of the return, was not constructed under and by virtue of the contract of November 13, 1894.

"3d. In holding that 'An Act concerning the Hartford Bridge,' approved May 24, 1895, being chapter 168 of the Public Acts of 1895, and the Special Act, entitled 'Creating the Connecticut River Bridge and Highway District,' approved June 28, 1895, and the order and the requisition of the Commissioners passed September 14, 1895, as set forth in paragraphs 12, 13, and 14 of the return, were not in violation of the Constitution of the United States, nor of the 10th Section of Article One thereof, or of the Constitution of the State of Connecticut, and were valid and binding acts, and that all the doings and proceedings of said Commissioners of the Connecticut River Bridge and Highway District, including the order and requisition made on the town of Glastonbury and on the respondent, as treasurer of said town, are valid and binding in law.

"4th. In holding that said Public Act, approved May 24, 1895, and said Special Act, approved June 28, 1895, and the proceedings of said Commission, do not deny to the respondent and to said town of Glastonbury, of which he is treasurer, and to the citizens of said town, the equal protection of the laws, and especially of Sections 2665, 2666, 2667, and 2768 of the General Statutes of the State of Connecticut; and also Chapter 339 of the Public Acts of the State of Connecticut, approved July 9, 1895, and do not deprive said town and the citizens thereof of the equal protection of the laws, and is not, therefore, in violation of the Constitution of the United States, nor of Section One of Article 14 of the Amendments thereof.

"5th. In holding upon the facts as they appear upon the record, that said Public and Private Acts, and the order and requisition of said Commissioners for the Connecticut River Bridge and Highway District, passed and made on September 14, 1895, and all proceedings under the same were and are in accordance with the provisions of the Constitution of the United States, and of Section 10, Article One thereof, and Section 1, Article 14 of the Amendment thereof, and were and are valid and binding under said Constitution.

"6th. In holding that the Act approved May 24, 1895, being Exhibit "8" in the record of said Supreme Court of Errors, and especially the third section thereof, did not impair the obligation of the contract of November 13, 1894, between The Berlin Iron Bridge Company and the State of Connecticut (Exhibit "I," annexed to defendant's return), and was not in violation of the Constitution of the United States, nor of the 10th Section of Article 1 thereof.

"7th. In holding that the whole of said Act was not invalid by reason of its impairment of the obligation of said contract.

"8th. In holding that the defendant could not make the objection to said Act that it impairs the obligation of said contract.

"9th. In holding that the rights of the defendant could be and were affected by transactions and agreements between The Berlin Iron Bridge Company and the State of Connecticut, entered into and made since the commencement of these proceedings, and since the filing of the defendant's return, and by which the said Berlin Iron Bridge Company released its claim against said State of Connecticut on account of the contract of November 13, 1894.

"10th. In holding that said Special Act of June 28, 1895 (Exhibit 'B,' p. 73 of Record of said Supreme Court of Errors), does not deprive the town of Glastonbury nor the defendant, its treasurer, nor the citizens and inhabitants of said town, of property without due process of law, and that said Act does not

deny to said town, nor to the defendant as such treasurer, nor to the citizens and inhabitants of said town, the equal protection of the laws, and that said Act is not in violation of the Constitution of the United States nor of Section 1 of the XIVth Amendment thereof.

"11th. In holding that although it is the general policy of the State of Connecticut, as shown by its laws enacted before and since its Constitution was adopted, to leave the expense of public improvements for highway purposes to the determination of the municipal corporations within the limits of which the highways may be situated, and to charge them only with such obligations as may be incurred in their behalf by officers of their own selection, the Act of May 24, 1895 (Exhibit 'S,' Record of said Supreme Court of Errors), and the Act of June 28, 1895 (Exhibit 'B,' p. 79, Record of said Supreme Court of Errors), are not in violation of the Constitution of the United States nor of Section 1 of the XIVth Amendment thereof.

"12th. In holding that Section 4 of the Act approved June 28, 1895, provides that any rule or standard of apportionment of the expense for the ordinary support and maintenance of said bridge or highway, except such as said Commissioners may adopt, and is not in violation of the Constitution of the United States nor of Section 1 of the XIVth Amendment thereof.

"13th. In holding that said Acts of May 24, 1895, and June 28, 1895, do not violate the Constitution of the United States nor the fundamental principle of free government, that there can be taxation without representation, although said Acts provide for the taking of money by taxation from said town of Glastonbury, and from the inhabitants thereof by said Commissioners of said Connecticut River Bridge and Highway District, the inhabitants of said town having no voice in the appointment of said Commissioners.

"14th. In holding that the provisions for the issue of bonds as provided in Section 4 of said Special Act, approved June 28, 1895, and the means provided in said Special Act for the collection of said bonds constitute due process of law, and are not in violation of the Constitution of the United States nor of the XIVth

amendment thereof. And in holding that said Act and said provisions for the issue and collection of said bonds, are valid and binding on the defendant and the town of Glastonbury, and on the citizens and taxpayers thereof, and on the other towns named in said Act, and that said town of Glastonbury and said other towns and the citizens thereof can be compelled to pay said bonds, although under said Act they have no voice in issuing them, nor in the appointment of the Commissioners who are by authority of said Special Act empowered to issue them, and make them binding upon said town of Glastonbury, and upon this defendant, and upon the citizens and taxpayers of said town of Glastonbury, and the citizens and taxpayers of the other towns mentioned in said Act.

"15th. In holding that the appointment of said Commissioners of the Connecticut River Bridge and Highway District was a valid appointment.

"16th. In holding that the said Act approved May 24, 1895, and the Special Act approved June 28, 1895, and the proceedings of said Commissioners under said Acts constitute due process of law, and are not in violation of the Constitution of the United States, nor of the XIVth Amendment thereof, although said Acts give said Commissioners the right to take money from the defendant, as treasurer of the town of Glastonbury, and from the inhabitants and taxpayers of said town, for the purpose of constructing and maintaining highways and bridges outside of said town, and also give powers and privileges to said Commissioners and impose duties upon them in reference to highways and bridges, and their maintenance, which powers, privileges and duties, under the Constitution and laws of the State of Connecticut, belong exclusively to said town of Glastonbury, and to the other towns mentioned in said Act, and to the inhabitants and taxpayers thereof (to be exercised and performed either by themselves or by officers of their own choosing), and have exclusively belonged to said town of Glastonbury and to said other towns, and to the inhabitants and taxpayers thereof, since prior to the date of the adoption of the present Constitution of the State of Connecticut.

"Wherefore, the said S. H. Williams, plaintiff in error, prays that the judgment of said Supreme Court of Errors and of said Superior Court for Hartford County be reversed, and annulled, and altogether held for nothing, and that he may be restored to all things which he has lost by occasion of said judgments." (Record, pp. 69-71, inclusive.)

AUTHORITIES.

In Connecticut, towns are territorial subdivisions of the State, created at the will of the Legislature for the more convenient administration of local, public, and governmental affairs. Towns as such have no inherent rights or powers. Their duties, powers, and obligations are such as the Legislature may from time to time prescribe. The Constitution of Connecticut contains no limitations upon the powers of the Legislature in respect to the governmental duties, powers, and obligations which it may assign towns. The will of the Legislature is supreme.

Chidsey vs. Town of Canton, 17 Conn., 475; Town of Granby vs. Thurston, 23 Conn., 416; Abendroth vs. Town of Greenwich, 29 Conn., 362; Borough of Stonington vs. States, 31 Conn., 214; Webster vs. Town of Harwinton, 32 Conn., 131; State ex rel. Coe vs. Fyler, 48 Conn., 158; Turney vs. Town of Bridgeport, 55 Conn., 414; Dailey vs. City of New Haven, 60 Conn., 320; Town of East Hartford vs. Hartford Bridge Co., 10 How., 511.

Where it appears by the record that the judgment of the State court might have been based either upon a law which would raise a question of repugnancy to the Constitution, laws, or treaties of the United States, or upon some other independent ground; and it appears that the court did, in fact, base its judgment on such independent ground, and not on the law raising the Federal question, this court will not take jurisdiction of the case, even though it might think the position of the State court an unsound one.

In order to give this court jurisdiction of a writ of error to a State court, it must appear affirmatively, not only that a Federal question was presented for decision to the highest court of the State having jurisdiction, but that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it.

It is likewise settled law that, where the record discloses that if a question has been raised and decided adversely to a party claiming the benefit of a provision of the Constitution or laws of the United States, another question, not Federal, has been also raised and decided against such party, and the decision of the latter question is sufficient, notwithstanding the Federal question, to sustain the judgment, this court will not review the judgment.

Klinger vs. Missouri, 13 Wall., 257-263; Brown vs. Atwell, 92 U. S., 327; Beer Co. vs. Massachusetts, 97 U. S., 25; Citizens' Bank vs. Board of Equalization, 98 U. S., 140; Chouteau vs. Gibson, 111 U. S., 200; Adams County vs. Burlington & Missouri Railroad, 112 U. S., 123; Detroit City Railway Co. vs. Guthard, 114 U. S., 133; New Orleans Water Works Co. vs. Louisiana Sugar Refining Co., 125 U. S., 18; De Saussure vs. Gaillard, 127 U. S., 216; Wood vs. Skinner, 139 U. S., 293; Hammond vs. Johnson, 142 U. S., 73; New Orleans vs. New Orleans Water Works Co., 142 U. S., 79; Haley vs. Breeze, 144 U. S., 130; Eustis vs. Bolles, 150 U. S., 361; California Powder Works vs. Davis, 151 U. S., 389; N. Y. & N. E. R. R. Co. vs. Bristol, 151 U. S., 556; N. Y. & N. E. R. R. Co. vs. Woodruff, 153 U. S., 689; Fort Smith Ry. Co. vs. Merriam, 156 U. S., 478; Wailes vs. Smith, 157 U. S., 271; Central Land Co. vs. Laidley, 159 U. S., 103; Lambert vs. Barrett, 159 U. S., 660; Bartlett vs. Lockwood, 160 U. S., 357; Fallbrook Irrigation District vs. Bradley, 164 U. S., 112; Fowler vs. Lamson, 164 U. S., 252; Egan vs. Hart, 165 U. S., 188; Adams Ex. Co. vs. Ohio State Auditor, 165 U. S., 194.

The plaintiff in error has adopted a new name for the case at bar. It is the same case officially reported as follows:

State, ex rel. Morgan G. Bulkeley et al., vs. Samuel H. Williams, Treasurer, 68 Conn., 131.

ARGUMENT.

The assignment of errors is voluminous, but we think that it may be fairly reduced to two simple propositions:

First. The plaintiff in error claims that the Public Act approved May 24, 1895 (Record, page 57, Ex. "8") deprives the town of Glastonbury of its property without due process of law, in violation of the Constitution of the United States, Section 1, Article XIV of the amendment thereof, and

Second. The plaintiff in error claims that said Act approved May 24, 1895, and particularly Section 3d thereof, impairs the obligation of the alleged contract between The Berlin Iron Bridge Company and the State of Connecticut; and is, therefore, in violation of the Constitution of the United States, Section 10, Article I.

To the first assignment of error as abbreviated there are two substantial objections:

In the first place said statute does not deprive the town of Glastonbury of its property without due process of law; and

In the second place, if it did, the Act dealing simply with the public duty of a public corporation, it would not be in violation of the Constitution of the United States.

It appears distinctly upon the record that neither the town of Glastonbury nor its inhabitants are deprived of property. The statute places upon the town the obligation of contributing ratably to the maintenance of a public work, to wit: a public bridge and highway; and the town of Glastonbury is authorized to levy a tax for the amount which the town is required to contribute. It is a local tax; and the sum required of the town of Glastonbury is commensurate with the especial benefit resulting to that town, as judicially ascertained.

Said bridge and highway were first condemned under the provisions of the Act approved May 19, 1887 (Record, page 60, Exhibit "X"), and under that Act full hearing was had in a court of competent jurisdiction; and on the 10th of June, 1889, the trial court in the State of Connecticut passed a final decree assessing to the town of Glastonbury especial benefits, and fixing the proportion which the town of Glastonbury, with others, was to contribute towards the maintenance of said bridge and highway (Record, page 9, Exhibit "A").

The Act approved June 28, 1895 (Record, page 52, Exhibit "B"), under which these proceedings were instituted in the State court, also fixes the proportionate amount which the town of Glastonbury is required to contribute to the total expense for the construction and maintenance of said public bridge and highway, and it also provides a manner of enforcing that obligation in any court of competent jurisdiction, so that the town of Glastonbury has had its day in court under the Act of 1887, when the obligation was first placed upon that town as an especial benefit, and under the later Act pursuant to which these proceedings were instituted.

It cannot be said, then, that the town of Glastonbury has been deprived of its property without due process of law or has been denied the equal protection of the laws; but even if it were so the Constitution of the United States would not be violated.

The matter in question is strictly a police matter, which belongs exclusively to the jurisdiction of the State. The power of the Connecticut Legislature over the municipal corporations of the State is supreme, and whatever duty the Legislature should see fit to place upon a township for the maintenance of any public work, the judgment of the Legislature would be final. No Federal question is involved, and

the Federal Courts will not assume jurisdiction, or in any manner interpose between a State Legislature and a municipal corporation under such circumstances.

This Court held in Davidson vs. New Orleans, 96 U. S., 104, 105.

> "That whenever by the laws of a State, or by State authority, a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be for the whole State or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections.
>
> "It may violate some provision of the State Constitution against unequal taxation; but the Federal Constitution imposes no restraints on the States in that regard. If private property be taken for public uses without just compensation, it must be remembered that, when the fourteenth amendment was adopted, the provision on that subject, in immediate juxtaposition in the fifth amendment with the one we are construing, was left out, and this was taken. It may possibly violate some of those principles of general constitutional law, of which we could take jurisdiction if we were sitting in review of a Circuit Court of the United States, as we were in Loan Association vs. Topeka (20 Wall., 655). But however this may be, or under whatever other clause of the Federal Constitution we may review the case, it is not possible to hold that a party has, without due process of law, been deprived of his property, when, as regards the issues affecting it, he has, by the laws of the State, a fair trial in a court of justice, according to the modes of proceeding applicable to such a case. This was clearly stated by this Court, speaking by the Chief Justice, in Kennard vs.

> Morgan (92 U. S., 480), and, in substance, repeated at the present term, in McMillan vs. Anderson (95 id., 37)."

The public work in question is one in which it was peculiarly the duty of the State of Connecticut to provide for under some form of legislation.

The State might have assumed the expense itself, or assigned the burden to the county or to the towns of Hartford and East Hartford, or either one of them; or it might have created a Bridge and Highway District embracing towns especially benefited.

These are merely matters of detail, and so long as the parties interested have an opportunity to be heard in the ordinary course of civil procedure in the State, there is no Federal question involved.

That point was decided in Davidson vs. New Orleans, 96 U. S., already quoted. Justice Miller in giving the opinion of the Court in that case (pages 99, 100), speaks as follows:

> "The objections raised in the State courts to the assessment were numerous and varied, including constitutional objections to the statute under which the assessment was made, and alleged departures from the requirements of the statute itself. And although counsel for the plaintiff in error concede, in the first sentence of their brief, that the only Federal question is, whether the judgment is not in violation of that provision of the Constitution which declares that 'no State shall deprive any person of life, liberty, or property without due process of law,' the argument seems to suppose that this court can correct any other error which may be found in the Record.
>
> "1. It is said that the legislature had no right to organize a private corporation to do the work, and, by statute, to fix the price at which the work should be done.

"2. That the price so fixed is exorbitant.

"3. That there may be a surplus collected under the assessment beyond what is needed for the work, which must in that event go into the city treasury.

"Can it be necessary to say, that if the work was one which the State had authority to do, and to pay for it by assessments on the property interested, that on such questions of method and detail as these, the exercise of the power is not regulated or controlled by the Constitution of the United States?"

In the very recent case of the Fallbrook Irrigation District vs. Bradley, 164 U. S., 112, this Court reaffirmed the principle laid down in Davidson vs. New Orleans, above quoted.

The payments required of the several towns making up the Connecticut River Bridge and Highway District are provided for in the statute under which this action was brought in the State Court. (Record, page 53.)

The statute reads as follows:

"Said towns are hereby authorized and directed to provide for such payments in the annual tax levy of said towns." (Record, page 53, Sec. 4.)

"And said commissioners are authorized to apply to any court of competent jurisdiction, whether of State or the United States, for, and in any matter appertaining to said work, and to procure the enforcement and execution of their orders, and the courts of this State are hereby fully empowered, upon proper proceedings brought by, or at, the instance of said commissioners or any interested party, to enforce by mandamus or otherwise, the orders of said commissioners, made under authority of this resolution." (Record, page 55, Sec. 7.)

It must be remembered in this connection that the obligation imposed upon the town of Glastonbury had already been judicially determined under the decree of June 10, 1889, as already referred to.

The court of last resort in the State of Connecticut has declared this statute constitutional, and the obligation binding upon the town of Glastonbury, a municipal corporation of that State.

It is declared by this Court in Fallbrook Irrigation District vs. Bradley, 164 U. S., 154—a case appealed from the United States Circuit Court — that "in exercising that jurisdiction it is nevertheless the duty of the trial court to follow, and be guided by decisions of the highest State court upon the construction of the statute, and upon the question whether as construed the statute violated any provisions of the State Constitution."

It is evident that the Supreme Court of the State did not consider that the Record presented any question as to due process of law, or equal protection of the laws under the Federal Constitution.

The language of the State court upon that point is as follows:

> "The defendant also urges that the Act of June 28th violates the XIV amendment of the Constitution of the United States, in that it deprives the town of Glastonbury of property, without due process of law, and denies to it the equal protection of the laws. No right, as against the State, to the equal protection of the laws is secured to its municipal corporations by this amendment, which can limit in any way legislation to charge them with public obligations. Nor have their inhabitants, in their capacity of members of such corporations, any greater right or immunities. New Orleans vs. New Orleans Water Works Co., 142 U. S., 79, 93. No property of the town of Glastonbury has been or is to be taken. Booth vs. Town of Woodbury, 32 Conn., 118, 130; Railroad Co. vs. County of Otoe, 16 Wall., 667, 676. A duty to lay taxes for public purposes has been imposed, and for reasons already stated, it was competent to the General Assembly to create

> that duty, as it was created. Their proceedings were due proceedings; the process by which it is now sought to compel the defendant to pay the sum in controversy is due process. The town can found no claim, under the Constitution of the United States, any more than under that of Connecticut, to such right of local self-government as precludes the General Assembly from exacting this payment, notwithstanding the demand come from another municipal corporation, the Bridge District, in choosing whose members, or directing whose affairs, it has had no share. Giozza vs. Tiernan, 148 U. S., 657, 662." (Record, page 83.)

When parties have been fully heard in the regular course of judicial procedure, they cannot say that they have been deprived of their property without due process of law within the meaning of the Federal Constitution.

Justice Gray in giving the opinion of the court in the case of Central Land Company vs. Laidley, 159 U. S., on page 112 says:

> " When the parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of a State court does not deprive the unsuccessful party of his property without due process of law, within the Fourteenth Amendment of the Constitution of the United States. Walker vs. Sauvinet, 92 U. S., 90; Head vs. Amoskeag Co., 113 U. S., 9, 26; Morley vs. Lake Shore Railroad, 146 U. S., 162, 171; Bergmann vs. Backer, 157 U. S., 655.

It would seem, therefore, that " due process of law " was amply provided for by the statute in question, as that principle has always been interpreted by this Honorable Court, and as the same is interpreted by the court of last resort in the State of Connecticut.

As to the second assignment of error, as abbreviated, under which the plaintiff in error claims that the statute approved

May 24, 1895, (Exhibit 8, Record, page 57) violates the obligations of the alleged contract, it may be truly said:

First—That the obligations of said alleged contract have not been violated;

Second — That the obligations of said alleged contract have been paid; and

Third — That there never was any valid contract.

The first section of said Act repeals the Act of 1893, under which the State assumed the expense of maintaining said bridge and causeway. (Record, page 57.)

The second section reimposes upon the five towns the obligation of maintaining said bridge and causeway in the proportion fixed by the decree of June 10, 1889.

The remaining sections of said Act, wherein said alleged contract is referred to, not only does not violate its obligations, but is very careful to protect them. It preserves the obligations of the alleged contract to The Berlin Iron Bridge Company in three distinct ways:

First — By raising up a special tribunal, where the claims of The Berlin Iron Bridge Company could be heard speedily and without expense of litigation;

Second — By providing that The Berlin Iron Bridge Company might bring suit against the State to recover damages not exceeding forty thousand dollars ($40,000) where "said suit or suits shall be commenced by complaint, as by law prescribed in civil actions." (Record, page 59, Sec. 5.)

Third — The Berlin Iron Bridge Company might institute a suit for the purpose of testing the validity of said contract, and if found valid by the court, "then the Comptroller is

authorized and directed to carry out and complete said contract according to the provisions thereof, and to employ a competent engineer to supervise the construction of said bridge; and to draw his order or orders upon the State Treasurer for the same and for said cost of supervision." (Record, page 59, Sec. 8.)

The validity of said alleged contract was denied by the relators (Record, page 38, paragraphs 5, 6, and 7), and it is evident by the language of the statute in question approved May 24, 1895, that the Legislature did not recognize said alleged contract as a valid and binding contract upon the State, notwithstanding which, for the good name and honor of the State, the Legislature provided that the State might be subject to suit for damage by The Berlin Iron Bridge Company; " and in any event whether said contract shall be valid or not, said The Berlin Iron Bridge Company shall be entitled to recover for all material furnished, and all expense of every kind actually incurred under, in relation to, or in connection with said contract, including therein all legal and personal expenses." (Record, page 58, Sec. 4.)

It appears of record also that The Berlin Iron Bridge Company accepted the provisions made in Section 3 of the Act, page 58 of the Record, and in consideration of the sum of twenty-seven thousand five hundred and twenty-six dollars ($27,526) paid by the State, the company in fact surrendered said contract to the State and gave a receipt in full for all its obligations. (Exhibits " 9," " 10," and " 11." Record, pages 50, 51, and 52.)

It is true that this release and surrender of the contract was subsequent to the commencement of these proceedings in the State court, and the plaintiff in error has alleged in his ninth assignment of errors (Record, page 70) that the court erred " in holding that the rights of the defendant could be and were

affected by the transactions and agreements between The Berlin Iron Bridge Company and the State of Connecticut, entered into, and made, since the commencement of these proceedings and since the filing of the defendant's return; and by which The Berlin Iron Bridge Company released its claim against the said State of Connecticut on account of the contract of November 13, 1894."

This assignment of error refers simply to a matter of pleading in the State court. The Supreme Court of the State decided that:

> "In mandamus proceedings matters occurring after the suit is brought can be properly considered in determining whether the writ shall be made peremptory." (Record page 83.) That decision is, of course, final:
>
> "The State court held, however, the pleadings sufficient to permit of the examination and determination of the point on which its decision turned, and that conclusion involved no Federal question." (Grand Rapids and Indiana Railroad Company vs. Butler, 159 U. S., 91.)

It is difficult to conceive of a legal fiction or a poetic license so extravagant as to give color to the claim that the statute referred to violates the obligations of the alleged contract.

Not only it is true that the statute in question does not violate the obligations of the contract, but the plaintiff in error, or town of Glastonbury, was not a party to the alleged contract and is not in position in the record to make any claim of the kind. The plaintiff in error set up the alleged contract in defense in the State court. It is evident, however, that that part of the defense was irrelevant and is not properly a part of the record.

It would have been better pleading, perhaps, if the relators had demurred to that part of the respondent's return in the

State court which counted upon the contract in question; but if the relators had done so they would have admitted for the purposes of the demurrer that said contract was, in fact, a valid contract binding upon the State, and that it was, in fact, outstanding and still in force; whereas, the fact was that the State did not recognize said contract as a valid and binding contract, as shown by the language of the statute now under consideration; and the alleged contract had in fact been liquidated and surrendered.

The relators, therefore, preferred to state the fact correctly upon the record, rather than rely upon a question of law under an assumed statement of fact, which was not in fact true.

An inspection of the record fails to disclose any violation of Article I, Section 10 of the Constitution of the United States. No such question was decided by the State Court. The Supreme Court of the State disposed of that point as follows:

> " Nor is it of any importance that in 1893 the State had taken the maintenance of the bridge upon itself. This was merely a gratuitous act with no element of a contract, and gave rise to no vested rights except such as might accrue from obligations on the part of the State, subsequently assumed by virtue of its provisions.
>
> " It is contended that such obligation was contracted in favor of The Berlin Iron Bridge Company, and was impaired by the legislation of 1895. If so, legislation would be so far forth invalid as against that company, under Art. I., Sec. 10 of the Constitution of the United States. The result would be that the contract made between it and the Bridge Commissioners, acting under the Act of 1893, would remain in force; but not that the State could not compel the towns especially benefited by its execution to pay for the benefits received. In fact, however, the pleadings show that the Bridge Company, availing itself of the remedy tendered by the Act of May 24, 1895, presented its claim for breach of contract to the commission appointed to

> examine it, and pending this action has accepted their award, and discharged the State from all demands. This, at all events, left the towns or their representatives in no position to raise this objection on constitutional grounds." (Record, page 83.)

It appears, therefore, that the claim of the plaintiff in error that the obligations of said contract have been impaired in violation of Article I, Section 10 of the Constitution of the United States has nothing in the record to stand upon. It appears of record that the Act in question does not violate the obligations of the alleged contract. It further appears of record that the plaintiff in error, or the town of Glastonbury, was not in position to raise the point in any event; and it further appears of record, that the alleged contract had been liquidated and surrendered to the State before this case was decided in the trial court; and the judgment of the trial court thereon has been affirmed by the Supreme Court of the State.

It is not sufficient for the plaintiff in error to claim that the decision of the State court has violated the provisions of the Federal Constitution. The Record should show at least color of ground for such claim, in order to give this court jurisdiction.

> "We do not think it necessary to narrowly inquire whether the record formally discloses that the respondents relied upon and pleaded rights under the Constitution of the United States, because we are of opinion that even if it be conceded that the respondents did, in form, invoke the provisions of the Federal Constitution, yet that no Federal question was really raised. The bare averment in the answers of supposed infringements in the proceedings of rights possessed by the respondents under the Constitution of the United States will not alone suffice. As was said in New Orleans vs. New Orleans Waterworks, 142 U. S., 79: 'While there is in the . . . answer of the city a formal averment that the ordinance impaired the ob-

> ligation of a contract arising out of the Act of 1877, which entitled the city to a supply of water free from charge, the bare averment of a Federal question is not, in all cases, sufficient. It must not be wholly without foundation. There must be at least color of ground for such averment, otherwise a Federal question might be set up in almost any case, and the jurisdiction of this Court invoked simply for the purpose of delay.' And in Hamlin vs. Western Land Company, 147 U. S., 531, 532, where the foregoing opinion was quoted with approval, it was said: 'A real and not a fictitious Federal question is essential to the jurisdiction of this Court over the judgments of State Courts.'" (Fort Smith Railway vs. Merriam, 156 U. S., 483.)

The decision of the State court rests distinctly upon the ground that under the Constitution of Connecticut, the Legislature could exercise such powers over the municipal corporations of the State as it, in fact, did exercise under the statute in question.

We quote from the opinion of the State Court as follows: (Record, pages 78 and 79.)

> "The constitution of Connecticut was ordained, as its preamble declares, by the people of Connecticut. It contemplates the existence of towns and counties, and without these the scheme of government, which it established, could not exist. It secured to these territorial subdivisions of the State certain political privileges in perpetuity, and among others the election by each county of its own sheriff, and by each town of its own representatives in the General Assembly, and its own selectmen and such officers of local police as the laws might prescribe. It secured them, because it granted them; not because they previously existed. Towns have no inherent rights. They have always been the mere creatures of the colony or the State, with such functions and such only as were conceded or recognized by law. Webster vs. Harwinton, 32 Conn.,

131. The State possesses all the powers of sovereignty, except so far as limited by the Constitution of the United States. Its executive and judicial powers are each distributed among different magistrates, elected some for counties, and some for the State at large; but its whole legislative power is vested in the General Assembly. Our constitution imposes a few, and only a few, restrictions upon its exercise, and except for these the General Assembly, in all matters pertaining to the domain of legislation, is as free and untrammeled as the people would themselves have been had they retained the law-making power in their own hands, or as they are in adopting such constitutional amendments from time to time as they think fit. Pratt vs. Allen, 13 Conn., 119, 125; Booth vs. Town of Woodbury, 32 Conn., 118, 126. It has not infrequently, from early colonial days, made special provision for particular highways or bridges, and in several instances by the appointment of agencies of its own to construct or alter them at the expense of those upon whom it thought fit to cast the burden. 1 Col. Rec., 417; 5 id., 80; 13 id., 601; 14 id., 605, 630; 1 Private Laws, 282, 285. By legislation of this nature the city of Hartford was recently compelled to contribute a large sum for a separation of grades at the Asylum Street railroad crossing, and we held the Act to be not unconstitutional. Woodruff vs. Catlin, 54 Conn., 277; Woodruff vs. N. Y. & N. E. R. R. Co., 59 Conn., 63, 83.

"That so many laws of this general description have been enacted by the General Assembly, both before and since the adoption of our Constitution is, of itself, entitled to no small weight in determining whether they fall within the legitimate bounds of what that instrument describes as 'legislative power.' Maynard vs. Hill, 125 U. S., 190, 204; Wheeler's Appeal, 45 Conn., 306.

"One of those to which reference has been made (I. Private Laws, p. 285) required the town of Granby to build and maintain a bridge across the Farmington River, half of which was in the town of Windsor, and was adjudged to be valid by this court, notwithstanding

then as now the General Statutes provided that bridges over rivers dividing towns should be built and maintained at their joint cost. Granby vs. Thurston, 23 Conn., 416. There is no principle of free government or rule of natural justice which demands that the support of highways and bridges shall be imposed only on those territorial subdivisions of the State in which they are situated. If it be required of them, it is only by virtue of a statute law, which the legislature can vary or repeal at pleasure. Chidsey vs. Canton, 17 Conn., 475, 478. The burden is one that the legislature can put on such public agencies as it may deem equitable, and transfer from one to another, from time to time, as it may judge best for the public interest. Dow vs. Wakefield, 103 Mass., 267; Agawam vs. Hampden, 130 Mass., 528; County of Mobile vs. Kimball, 102 U. S., 691, 703; Washer vs. Bullitt County, 110 U. S., 558."

But even if a Federal question was decided by the State court, this court would not assume jurisdiction unless it clearly appeared that a decision of the Federal question was necessary to the disposal of the case in the State court.

"It thus appears that in point of fact the Supreme Court of the State of South Carolina, in its opinion in this case, passed upon the Federal question sought to be raised by the plaintiff as the foundation of his case, and decided it adversely to him; but the analysis of the case which we have made shows clearly that the decision of that question was not necessary to the judgment. Before reaching that question, the Supreme Court had already decided that the action of the plaintiff could not be sustained, according to the meaning of the provisions of the statute under which it was brought. The decision of that point was final, and was fatal to the plaintiff's right of recovery. That question is not a Federal question; it does not arise under the Constitution of the United States, or of any law or treaty made in pursuance thereof. It is not a question, therefore, which, under this writ of error, we have a right to review.

We are not authorized to inquire into the grounds and reasons upon which the Supreme Court proceeded in its construction of that statute. It is a State statute conferring certain rights upon suitors choosing to avail themselves of its provisions upon certain conditions in certain cases. Who may sue under it, and when, and under what circumstances, are questions for the exclusive determination of the State tribunals, whose judgment thereon is not subject to review by this court. It was competent for the State of South Carolina either to grant or withhold the right to bring suits against the officers of the State for the recovery of money alleged to have been illegally exacted and wrongfully paid. If granted, the action is in substance, though not in name, an action against the State itself, just as an action permitted by the acts of Congress on the subject against a collector of customs for the recovery of duties alleged to have been illegally exacted and paid under protest, is an action against the United States, though nominally against the collector. In such cases, as the State may withhold all remedy, it may attach to the remedy it actually gives whatever conditions and limitations it chooses; and its own interpretation and application of its statutes on that subject, given by its own judicial tribunals, are conclusive upon the parties seeking the benefit of them. No right secured by the Constitution of the United States to any citizen is affected by them unless they are framed or administered so as, in some particular case, to deprive the party of his property without due process of law, or to deprive him of the equal protection of the laws. No such question is or can be made in reference to the statute of South Carolina under consideration. It authorizes, in certain enumerated cases, parties found to be within its terms to bring a prescribed action against the State in the name of one of its officers. According to the decision of its highest tribunal, the plaintiff in this action is not within the class entitled to sue. To review that judgment is not within the province of this court, because it does not deny or injuriously affect any right claimed by the plaintiff under the Constitution or laws of the United States." De Saussure vs. Gillard, 127 U. S., 216, 232, 233.

In the following case the writ of error was dismissed for want of jurisdiction. The question arose upon the construction of a statute relating to insolvency in the State of Massachusetts by the Supreme Court of that State. Justice Shiras, in giving the opinion of the court, says:

> "It is settled law that, to give this court jurisdiction of a writ of error to a State court, it must appear affirmatively, not only that a Federal question was presented for decision by the State court, but that its decision was necessary to the determination of the cause, and that it was actually decided adversely to the party claiming a right under the Federal Laws or Constitution, or that the judgment as rendered could not have been given without deciding it. Murdock vs. Memphis, 20 Wall., 590; Cook County vs. Calumet & Chicago Canal Co., 138 U. S., 635.
>
> "It is likewise settled law that, where the record discloses that if a question has been raised and decided adversely to a party claiming the benefit of a provision of the Constitution or laws of the United States, another question, not Federal, has been also raised and decided against such party, and the decision of the latter question is sufficient, notwithstanding the Federal question, to sustain the judgment, this court will not review the judgment."
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> Eustis vs. Bolles, 150 U. S., 366.

We think it may be fairly said that no Federal question appears upon the record. The plaintiff in error attempted to raise two Federal questions which were disposed of in the decision of the Supreme Court of the State, by saying that those questions did not exist. The opinion of the State court was confined for the most part to the construction of the statute in question under the Constitution of the State of Connecticut. The decision can be sustained on those grounds, and without reference to the Federal questions which plaintiff in error attempted to raise.

There was a dissenting opinion filed by Chief Justice Andrews, concurred in by Justice Hamersley, but the dissenting opinion, like the opinion of the court, travels upon the lines of the State Constitution. The dissenting opinion does not deny the constitutional power of the Legislature of Connecticut to provide for the maintenance of said bridge and causeway, nor its power to require the towns especially benefited to maintain said bridge and causeway, nor its power to authorize the towns to levy taxes for its maintenance, nor its power to create a bridge and highway district, with commissioners charged with the duty of executing the law, but dissents from the opinion of the court simply upon the ground that the Commissioners representing the towns benefited should have been elected by the towns in the first instance, rather than appointed by the Legislature.

The dissenting opinion opens as follows (Record, p. 85):

> " I deem it clear and certain that the duty which the Act referred to authorized the relators to perform, was a town duty. Nowhere in the Act are the relators made State officers and charged with State duties; but, on the contrary, they are spoken of as town officers, set to transact town affairs. The maintenance of the highway of which the relators have the care, cannot be regarded as anything other than a town duty, without imputing to the Legislature the intent to inflict on these towns the monstrous injustice of making their inhabitants liable to pay the damages caused by the non-feasance or a misfeasance of a duty not imposed on them by law. The relators are totally unlike the commissioners appointed in the case of the Asylum Street railroad crossing. In that case, the State, in the exercise of its soverign authority, appointed its own officers to abate a nuisance dangerous to human life, for the existence of which the three corporations named were jointly responsible.
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> Woodruff vs. Catlin, 54 Conn., 277, 295; Woodruff vs. N. Y. & N. E. R. R. Co., 59 id., 63.

Supreme Court of Errors

FIRST JUDICIAL DISTRICT,

May Term, 1896.

STATE ex rel. COMMISSIONERS FOR THE CONNECTICUT RIVER BRIDGE AND HIGHWAY DISTRICT

VS.

S. H. WILLIAMS,
Treasurer of the Town of Glastonbury.

Brief for Relators.

SPERRY, McLEAN & BRAINARD,
Counsel.

HARTFORD, CONN.:
PRESS OF THE CASE, LOCKWOOD & BRAINARD COMPANY.
1896.

> "The relators, although appointed to transact town affairs, are — six of them — not inhabitants of Glastonbury. They were not elected by the inhabitants of that town, nor has that town any control over their conduct. And from so much of the opinion as holds that the order of the relators is obligatory on that town through the town treasurer, I wholly dissent."

The Chief Justice, after discussing at length the peculiarity of town government in Connecticut under the Connecticut Constitution, closes as follows:

> "In this State we are not obliged to invoke the underlying principle of American constitutional law in order to protect the inhabitants of our towns in their right to local self-government; the express provisions and necessary implications of our own Constitution plainly guarantee that right. Therefore, the Private Act, by which the Legislature undertook to appoint these relators to execute the powers and perform the duties committed by the Public Act to the town of Glastonbury and the four other towns, as town corporations, violates a clear mandate of the Constitution, and to that extent is void." (Record, p. 98.)

IN CONCLUSION.

It seems clear to the counsel for defendant in error that no Federal question was raised in the Record for the following reasons:

1st. No property of the town of Glastonbury is, in fact, taken without due process of law, nor is the town of Glastonbury denied the equal protection of the laws in violation of Section One, Article Fourteen, of the Federal Constitution. The only obligation imposed upon the town of Glastonbury is the statutory obligation of contributing to the maintenance of a free public bridge and highway, in respect to which that town has been found to be especially benefited under the decree of the Superior Court for Hartford County, June 10,

1889, pursuant to the Public Act of 1887. Record, p. 9, Exhibit "A."

2d. No property of the town of Glastonbury is, in fact, taken. The town is merely required to provide funds for that purpose in its annual tax levy.

3d. The town of Glastonbury has had the equal protection of the laws in its opportunity to be heard under the ordinary forms of civil procedure, in the courts of the State under the Act of 1887, as well as under the Act of May 24, 1895, upon which these proceedings were instituted in the State Court.

4th. The object of the statute in question is to provide for the maintenance of a public work which the State of Connecticut, in its sovereign capacity, is morally bound to provide for. The town of Glastonbury is a municipal corporation existing under the Constitution and laws of Connecticut, with such limited, governmental powers and duties as the Legislature of Connecticut may assign to it. The Federal Constitution cannot be invoked under such circumstances to control the legislative action of the sovereign State of Connecticut.

5th. The obligations of an alleged contract have not been impaired in violation of Section Seven, Article One, of the Federal Constitution, because it does not appear that said alleged contract was a valid and binding contract upon the State of Connecticut.

6th. It appears that the obligations of said alleged contract were carefully protected under the Act in question. The obligations of said alleged contract were fully discharged by the State, and said alleged contract surrendered to the State previous to the judgment in the trial court.

7th. The town of Glastonbury was not a party to said al-

leged contract, and cannot be heard in court, either to enforce its obligations, or complain of its violation.

We confidently believe, therefore, for the reasons above stated, and upon the authorities above quoted, that this Honorable Court will not so construe the Constitution of the United States as to set a limit to the powers of the Legislature of the State of Connecticut over the municipal corporations of Connecticut in respect to public improvements, in view of the fact that the Constitution of Connecticut fixes no limits, and the court of last resort of Connecticut has decided that the statute in question is constitutional.

We respectfully submit, therefore, that the writ of error should be dismissed for want of jurisdiction, because it does not appear that any Federal question necessarily arises upon the record, or was actually decided by the State court, or if it appears of record that a Federal question is so presented as to give this court jurisdiction, then the question on which the jurisdiction depends is so frivolous as not to need further argument.

We do not care to say more on the pending motion to dismiss or affirm. The case was argued at length in the State court, but, as we understood it at that time, the point chiefly in issue was the power of the Legislature of Connecticut under the Constitution of that State to create a taxing district, and to assign to it the duty of maintaining the public improvement referred to. We submitted to the State court a long list of authorities upon that point. Those authorities are applicable, collaterally at least, to the motion to dismiss or affirm pending here, and clearly present the controlling issue discussed before and decided by the State court. Thinking this Honorable Court might wish to examine that question, as presented to the Supreme Court of Connecticut, we have taken the liberty of attaching to our brief in support of the motion now

pending the brief used in argument in this case before the State court. An examination of the authorities there collated will show that the manner of providing for the prosecution of this public improvement by the State of Connecticut under the statute in question is similar to the manner adopted in like cases in many of the States, and wherever the question has arisen, it has been uniformly held both by the State and Federal Courts that the discretion of the Legislature in such matters cannot be controlled either by the Constitution of the State or by the Constitution of the United States.

LEWIS SPERRY,
GEORGE P. McLEAN,
AUSTIN BRAINARD,
Counsel for Defendant in Error.

Hartford, April 1, 1897.

State of Connecticut.

Supreme Court of Errors,

FIRST JUDICIAL DISTRICT.

May Term, 1896.

STATE *ex rel.* COMMISSIONERS FOR THE CONNECTICUT RIVER BRIDGE AND HIGHWAY DISTRICT

vs.

S. H. WILLIAMS,
TREASURER OF THE TOWN OF GLASTONBURY.

Brief for Relators.

STATEMENT OF THE CASE.

Chapter 239 of the Public Acts of 1895 and Chapter 343 of the Private Acts of 1895 make it the duty of the towns of Hartford, East Hartford, South Windsor, Manchester, and Glastonbury to construct, reconstruct, care for, and maintain "a free public highway across the Connecticut River at Hartford and the causeways and approaches appurtenant thereto, as described in a decree of the Superior Court passed June 10, 1889, in which decree said highway was laid out and established."

The relators were appointed by said special act as commissioners, with full power to reconstruct, repair, and main-

tain said bridge and causeways, and compel the five towns above-named to pay their several portions of any and all expenses so incurred by "mandamus or otherwise."

On the 16th day of April, 1895, the commissioners had incurred expenses to the amount of $500 in the repair of the causeway, east of the bridge proper, and thereafter found the amount due from the town of Glastonbury as its proportion of said expense, under the provisions of said special act, to be the sum of $15.00. An order was accordingly passed by said commissioners, and demand was made of the treasurer of said town, as the law provides. The treasurer refused to pay the order, and the commissioners thereupon brought this writ of mandamus to enforce payment of the same.

The respondent town makes return to the writ, setting up several defenses, stated briefly as follows:

1.

"The act of the General Assembly approved May 24, 1895, is in violation of the Constitution of the United States and of the tenth section, article one, thereof, because it impairs the obligations of an alleged contract existing between the State of Connecticut and The Berlin Iron Bridge Company for the construction of a bridge across said Connecticut River between the towns of Hartford and East Hartford, dated the 13th day of November, 1894, and amended January 14, 1895, and reaffirmed the 18th day of May, 1895." (Record, p. 23.)

2.

"The order and requisition of said commissioners passed on the 14th day of September, 1895 (relator's Exhibit "D"), by the terms of which the said town of Glastonbury was ordered and required to pay by its treasurer to the said the Commissioners for the Connecticut River Bridge and Highway District, or to their treasurer, the said sum of $15.00, and all proceedings thereunder are in violation of

the Constitution of the United States and of the tenth section of article one thereof, and void for the reasons alleged in paragraph 12 of the return." (Record, p. 23.)

3.

"The special act, approved June 28, 1895, is in violation of the Constitution of the United States and of the tenth section of article one thereof, because it impairs the obligations of the alleged contract existing between the State of Connecticut and The Berlin Iron Bridge Company for the construction of a bridge across the Connecticut River between the towns of Hartford and East Hartford, and dated the 13th day of November, 1894, and amended January 14, 1895, and reaffirmed the 18th day of May, 1895." (Record, p. 25.)

4.

"The act, approved May 24th, and said order and requisition of said commissioners, dated September 14, 1895, are in violation of the Constitution of this state and of sections 1 and 11 of the first article thereof, because said act denies to said towns and to the citizens thereof equal rights under the laws of the state, and because it takes the property of said towns and of the citizens thereof without just compensation therefor." (Record, p. 23.)

5.

"Said special act is in violation of the Constitution of the State of Connecticut, and of sections 1 and 11 of the first article thereof, for the same reasons as alleged in paragraphs 14 and 21 of the return." (Record, p. 26.)

6.

"The writ is not properly brought in the names of the commissioners." (Record, pp. 26, 27.)

7.

"The writ cannot be brought against the treasurer of one town, but the treasurers of the five towns should have been joined." (Record, pp. 26, 27.)

The relators reply to the special defense based upon the alleged contract with the bridge company:

1.

That no legal, valid contract ever existed between the State of Connecticut and The Berlin Iron Bridge Company. (Record, p. 54.)

2.

That the alleged contract, if ever valid, has been surrendered to the state, canceled, and discharged, and all claims on account thereof have been fully paid and satisfied. (Record, pp. 53, 54.)

3.

That any and all parties claiming and having any right to claim anything on account of said alleged contract have had full opportunity to be heard, and have been heard, by a lawfully constituted tribunal, and their claims have been adjudicated, discharged, and paid to the satisfaction of the claimants. (Record, pp. 53, 54.)

The relators demur to the claim that the action is not properly brought in the names of the relators against the treasurer of the respondent town. (Record, pp. 56, 57.)

The relators demur specially to the claims of the respondent that the acts in question are in violation of any of the provisions of the Constitution of the United States or the State of Connecticut. (Record, pp. 55–59.)

The respondents rejoin by demurrer, claiming that the discharge of the alleged contract subsequent to the filing of the return cannot affect the status of the parties existing at the time the writ was served, and that as they were not parties to the proceeding resulting in a discharge and surrender of the contract, they cannot be affected by such discharge and surrender.

A judgment *pro forma* was entered by the Superior Court, in which the demurrers filed by the relators are sustained, and the demurrers filed by the respondent are overruled. The record contains the public and private act of 1895, the decree of the Superior Court passed in 1889, the orders of the commissioners, the award to The Berlin Iron Bridge Company, and the discharge of the contract by said company; and the parties agree that the money called for by the order was expended on the causeway east of the bridge, as hereinbefore stated.

Other facts found by the Superior Court on agreement of parties will be referred to in the argument. (See Record, pp. 67–69.)

BRIEF.

I.

The only question that need be considered in this case may be safely stated as follows:

Has the General Assembly the power to establish a bridge or highway district and place the burden of the construction and maintenance of a highway or bridge upon the towns or localities included in said District?

While several other questions are raised by the record which we are anxious to have this court consider and answer, we contend that this is the only question directly involved.

It is admitted that the expense incurred in this case by the Commissioners was in no way connected with the bridge to be constructed by The Berlin Iron Bridge Company, under the alleged contract of November, 1894. The money was expended in the repair of the causeway east of the bridge, and in no way connected with it. This causeway forms a part of the

free public highway to be maintained by the five towns. The proportion assessed against the town of Glastonbury was $15.

The duty of the town to pay this sum and the power of the Commissioners to enforce its payment by mandamus must be conceded, provided the General Assembly had the power to compel the respondent town to share a portion of the expense incurred in the repair of the causeway in question.

Counsel for the town claim that the act of May 24, 1895, Chapter 148, and the special act of June 28, 1895, Chapter 343 (see Record, pp. 73–84) violate Sections 1 and 11 of the Constitution of the State of Connecticut, and Article 14 of the amendments to the Constitution of the United States, because

(1) The town and the citizens thereof are deprived of their property without due process of law.

(2) The town and the citizens thereof are denied the equal protection of the laws of the state, and particularly of Sections 2665, 2666, 2667, and 2768 of the General Statutes.

(3) The property of the town and its citizens is taken without just compensation therefor.

The provisions of the Constitution and the statutes claimed to be violated we print as follows: U. S. Constitution, Article 1, Section 10:

> "SEC. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in payment of Debts; pass any Bill of Attainder, *ex post facto* Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."

Constitution of Connecticut, Article 1, Sections 1 and 11:

> "SEC. 1. That all men when they form a social compact are equal in rights; and that no man or set of men are en-

titled to exclusive public emoluments or privileges from the community."

"SEC. 11. The property of no person shall be taken for public use without just compensation therefor."

General Statutes:

"SEC. 2665. Towns at their annual meetings may provide for the repair of their highways, for periods not exceeding five years, and if any town neglect to so provide at such meeting the selectmen may provide for such repairs for a period not exceeding one year."

"SEC. 2666. Towns shall, within their respective limits, build and repair all necessary highways and bridges, and all highways to ferries as far as the low-water mark of the waters over which the ferries pass, except where such duty belongs to some particular person. It shall be the duty of the town of Waterbury to construct and maintain all necessary bridges over the Naugatuck and Mad Rivers, within the limits of said town."

"SEC. 2667. Necessary bridges between towns shall be built and kept in repair at their equal expense, unless they otherwise agree."

"SEC. 2768. Ferries between two towns shall be maintained at their equal expense, unless they otherwise agree; but any person liable to maintain such ferry may be compelled so to do by such town or towns, and to reimburse them for all charges legally incurred by them by reason thereof."

Sections 2665, 2666, 2667, and 2768 of the General Statutes are, of course, general provisions, and apply to those cases only where the towns of the state would otherwise be under no obligation to construct or repair highways and bridges.

If the state, in the first instance, may establish bridge and highway districts, and lay a tax upon such districts for the construction and maintenance of the bridges and highways therein, it naturally follows that the General Statutes quoted

will to that extent be modified or repealed, and it is, therefore, clear that the relators are entitled to a favorable judgment if the General Assembly may in any case form a bridge or highway district and place the burden of maintaining a bridge upon the towns included in such district.

Free highways and bridges are constructed and maintained for the benefit of the public. It is impossible to apportion the expense equally among the individuals that may use them. Whether the State, or Hartford County, or the five towns, or one town is compelled to pay for the bridge and causeways in question is unimportant.

An examination of the decisions of this court and other courts of last resort bearing upon this question will reveal but one line of thought and conclusion.

In 1786 the town of Granby was created from a portion of the territory of the town of Simsbury. A controversy arose, subsequently, concerning the maintenance of a bridge between the two towns, in which case our Supreme Court says (see Town of Granby *vs.* Thurston and others, 23 Conn., 415): "In 1786, the Legislature having incorporated the town of Granby, previously a part of the town of Simsbury, and, having provided in the act of incorporation, that 'the s'd town of Granby shall ever hereafter keep and maintain a good and convenient bridge across Farmington River between Pickerel Cove and Windsor line, if ever hereafter ordered by this Assembly.'" In 1799, passed a resolution by which it was resolved, "That the inhabitants of the town of Granby do build and hereafter maintain a good and sufficient bridge, at their expense, across said river," referring to the place described in the former resolution, and where it was the dividing line between said towns. *Held, that such resolutions were not invalid, either as being unconstitutional, or on the ground that the General Assembly had no right to compel the town of Granby to support a bridge situated in part in the town of Simsbury; nor because said resolutions were passed*

without notice to said town of Granby; nor because the towns interested were not legally made parties; nor because at the passing said resolutions, there was a public statute law in force, providing that where a river is the dividing line between two towns, the bridges across the same should be supported equally by the two towns.

In The Borough of Stonington *vs.* State, 31 Conn., 214:

> "No obligation rests upon any territorial or municipal corporation in this state by the common law to lay out, construct, or repair highways, and no application can be made to any court to enforce such obligation, *unless it is imposed and the process is given by express statutory provision.*"

In Abendroth *vs.* Greenwich, 29 Conn., 362, the court says:

> "Towns, like other corporations, can exercise no powers except such as are expressly granted to them, or such as are necessary to enable them to discharge their duties and to carry into effect the objects and purposes of their creation." . . .
>
> "*Towns as such have no inherent rights or powers. They are created by the General Assembly and are subject to the control of the General Assembly.*
>
> "Now that provision enacted by the General Court in 1639 was both a grant and a limitation of vital power, ar was intended to embrace towns thereafter created (as they were in fact) by law, *and is utterly inconsistent with the idea of a reserved sovereignty, or of an absolute right in the towns*, and constituted the town corporations, and the continuance of it has continued them so; and that provision, with the numerous special provisions then and since made, prescribing their officers, and regulating their meetings and other proceedings, *and imposing and prescribing their duties as subordinate municipal corporations, constitute their charters; and thus their powers, instead of being inherent or reserved, have been delegated and controlled by the supreme legislative power of the state from its earliest organization.*"

Webster *vs.* the Town of Harwinton, 32 Conn., 131.

In State *ex rel.* Coe *vs.* Fyler, 48 Conn., 158:

"This court has repeatedly declared that towns have no inherent powers; none except such as they have either by express grant or necessary implication."

In Turney *vs.* Town of Bridgeport, 55 Conn., 414:

"In Connecticut towns are territorial subdivisions of the state, created at the will of the legislature for the more convenient administration of local, public, and governmental affairs. They have no powers except those conferred by express enactment or necessarily implied to carry into effect the object and purposes of their being."

In Dailey *vs.* City of New Haven, 60 Conn., 320:

"Even towns, which under our peculiar political history and policy, it was strongly urged in Webster *vs.* Town of Harwinton, 32 Conn., 131, possessed, because of their independent character, large original powers, were held to have no original or inherent powers whatever, but only such as are either expressly granted by the legislative power of the state or are necessary to the performance of their duties as territorial and municipal corporations."

There is no common law duty upon towns to maintain highways.

In Chidsey *vs.* Canton, 17 Conn., 478:

"The legislature have thought proper to impose upon the several towns in this state the burden of supporting the bridges and highways within their respective limits. The inhabitants of these towns derive no especial benefit from them, other than what is common to the citizens at large. Such accommodations for public travel are necessarily required in every civilized community, and generally must be provided at the public expense.

"The mode adopted for defraying such expense in this state is perhaps as convenient and equitable as any. At any rate the legislature in its wisdom has thought proper to give that mode the preference."

Mower *vs.* Inhabitants of Leicester, 9 Mass., 247.
Reed *vs.* Inhabitants of Belfast, 20 Maine, 246.

"In England, bridges, by statute, are generally supported by counties, and highways repaired by the occupiers of the lands in the parish where situated."

Burns' Justice, 164.

If there is any doubt about the policy and powers of the state in this regard it was evidently not entertained by the General Assembly of 1895.

Public Acts, 1895, Chapter 339.

This act in ten words repeals all of the sections of the general statutes which the respondents say cannot be changed by the General Assembly, and declares the future policy of the state to be directly in line with the provisions of the act which respondents say is unconstitutional.

This act is very brief and we quote it as follows:

"SECTION 1. Necessary bridges between towns, *except where it is otherwise especially provided for by law*, shall be built and kept in repair by such towns, and the expenses thereof shall be apportioned according to their grand lists, unless they otherwise agree.

"SEC. 2. *All acts and parts of acts inconsistent herewith are hereby repealed.*"

It is clear that the expression "except where it is otherwise especially provided by law," is merely declaratory of the rule that has always obtained in Connecticut.

The power of the General Assembly to establish a bridge district without regard to municipal or political subdivisions and place the burden of the construction and maintenance of a bridge upon such district in such proportions and in such manner as the General Assembly may provide, cannot be questioned.

In Desty on Taxation, 5th edition, pp. 276, 279, and 285, we find the law stated as follows: The legislature, in the exercise of its general powers of taxation as distinct from its power of local assessment, may create a special taxing district, Leehrman *vs.* Taxing Dist., 2 Lea, 425; Bowles *vs.* State, 37 Ohio St., 35, without regard to the municipal or political subdivisions of the state; Shaw *vs.* Dennis, 10 Ill., 416; Malchus *vs.* Dist. of Highlands, 4 Bush, 547; Shelby Co. *vs.* Railroad Co., 5 Bush, 225; People *vs.* Hawes, 34 Barb., 69; Bowles *vs.* State, 37 Ohio St., 35: and it is not essential that such districts should correspond with the political divisions; People *vs.* Central R. Co., 43 Cal., 398; Malchus *vs.* Dist. of Highlands, 4 Bush., 547. It may create taxing districts without regard to any territorial division of the state, and confine the taxation to the district benefited. In People *vs.* Brooklyn, 4 N. Y., 419, the court says:

> "But there never was any just foundation for saying that local taxation must necessarily be limited by or co-extensive with any previously established district. It is wrong that a few should be taxed for the benefit of the whole; and it is equally wrong that the whole should be taxed for the benefit of a few. No one town ought to be taxed exclusively for the payment of county expenses; and no county should be taxed for the expenses incurred for the benefit of a single town. The same principle of justice requires that where taxation for any local object benefits only a portion of a city or town, that portion only should bear the burthen. There being no constitutional prohibition, the legislature may create a district for that special purpose, or they may tax a class of lands or persons benefited, to be designated by the public agents appointed for that purpose, without refer-

ence to town, county, or district lines. General taxation for such local objects is manifestly unjust. It burthens those who are not benefited, and benefits those who are not burthened."

"The legislature may establish a taxing district by placing several streets in one district for purposes of improvement, the cost of improving to be assessed throughout the district, and apportion the expense by frontage along them all."

Parker *vs.* Challiss, 9 Kan., 155.

"The power to determine what shall be the taxing district for any particular burden is purely a legislative power, subject to be controlled only by constitutional provisions."

Desty on Taxation, p. 276.
People *vs.* Mayor of Brooklyn, *supra.*
Shaw *vs.* Dennis, 10 Ill., 416.
Conwell *vs.* Connersville, 8 Ind., 358.
Parker *vs.* Challiss, 11 Kan., 394.
Hingham, etc., Turnpike *vs.* Norfolk Co., 6 Allen, 353.
Malchus *vs.* District of Highlands, 4 Bush, 547.
Philadelphia *vs.* Field, 58 Pa. St., 320.
Langhorne *vs.* Robinson, 20 Grat., 661.

In Hingham Turnpike *vs.* Norfolk Co., 6 Allen (Mass.), 359, the court says:

"It often happens that a town, owing to its situation on a great route of public travel, and its intersection by a large stream, is obliged to make and support roads and bridges to an extent, and at an expense altogether disproportionate to its population and resources, in comparison with other towns in the vicinity. But no one ever supposed that such inequality absolved the town so situated from its legal duty of making and maintaining the roads and bridges within

its limits. *It is for the reason that this inequality sometimes becomes too great, and imposes too heavy a burden on a particular town or county, that the legislature deem it expedient, as in the case now before us, to pass some specific law for the construction and maintenance of a road or bridge with a view to a more just and equal distribution of a public charge among those immediately benefited, than would be made under the operation of general laws.* Such acts seem clearly to come within a due exercise of the power conferred by the clause of the constitution above cited, and their validity has been repeatedly recognized by this court."

The legislature judges finally and conclusively upon all questions of policy, as upon all questions of fact involved in the determination of a taxing district. In Litchfield *vs.* Vernon, 41 N. Y., 133:

"An examination of the case shows that, at the time of the passage of the act, the Long Island Railroad Company had the right of way in a tunnel constructed in Atlantic street, Brooklyn, for a railroad operated by steam, and were operating their road thereon; that the legislature deemed it expedient to close the tunnel, grade the street, lay a track upon the surface to be operated by horse power, etc., and to authorize the making of a contract with the railroad company for doing the work, and effecting the changes for a sum not exceeding $125,000. To carry into effect this design, the act in question was passed, authorizing the commissioners, whose appointment was provided for in the act, to make the contract, and to make an assessment for the payment of the contract price, together with the incidental expenses upon the lands and premises situated in the district specified in the act. This total assessment for those purposes, it is apparent, was based upon the ground that the territory subjected thereto would be benefited by the work and change in question. *Whether so benefited or not, and whether the assessment of the expense should for this, or any other reason, be made upon the district, the legislature was the exclusive judge. The Constitution has imposed no restriction upon their power in this respect.* The counsel for the

> appellant concedes that this is true, so far as closing the tunnel and grading the street are concerned, but insists that compensating the company for abandoning the use of steam and substituting therefor horse power, does not come within the like principles. I am unable to see upon what ground the power of the legislature can be limited in respect to the latter, consistently with the doctrine held by this court, in the Town of Guilford *vs.* The Board of Supervisors, 3 Kernan, 143. In that case, it was held, that the legislature had the power to impose a tax upon the inhabitants of a town to pay a claim that had no legal validity, and that could in no way be enforced against the town. In other words, that it was within the power of the legislature to impose a tax upon a locality for any purpose deemed proper, and that its power in this respect is not restricted by the constitution of the state. The other cases show that when the legislature deem it proper to impose the burden upon any specified locality, they have the power of so doing."

Courts are without power to interfere with the legislative discretion, however erroneous it may be. Scoville *vs.* Cleveland, 1 Ohio St., 138; Gordon *vs.* Cornes, 47 N. Y., 611; Allen *vs.* Drew, 44 Vt., 187; Alcorn *vs.* Hamer, 38 Miss., 652; Arbegust *vs.* Louisville, 2 Bush, 271.

In Gordon *vs.* Cornes, 47 N. Y., 608:

> "The power of apportionment is included in the power to impose taxes, and is vested in the legislature; and in the absence of any constitutional restraint, the exercise by it of this power cannot be reviewed by the courts."

A special taxing district of part of a township may be created for drainage purposes. Lydecker *vs.* Englewood Drain, etc., Com's., 41 N. J. Law, 154; the act forming a levee district, to be composed of several parishes, is constitutional. Yeatman *vs.* Crandall, 11 La. Ann., 220.

Making and improving the public highways and the imposition of taxes are among the ordinary subjects of legislation, People *vs.* Flagg, 46 N. Y., 406; East Portland *vs.* Multomah Co., 6 Or., 62.

The legislature has power to pass a specific law for the construction and maintenance of a road or bridge, with a view to a more just and equal distribution of a public charge among those immediately benefited, than would be made under the operation of general laws, Hingham & Q., Br. & T. Co. *vs.* Norfolk Co., *supra*.

In Norwich *vs.* Co. Com'rs., of Hampshire, 13 Pickering, 62:

> "It will not throw much light on a question like this, to put extreme cases of the abuse of such a power, to test the existence of the power itself. It is said that the expense of erecting bridges in one section of the commonwealth, may be charged upon the inhabitants of another; that the inhabitants of Suffolk may be taxed for a bridge in Berkshire. But we think the decision in this case will warrant no such extravagant conclusion. Bridges, though they are designed for public convenience, and for all the citizens of the commonwealth, yet are more immediately beneficial to those whose local situation is such as to require the more frequent use of them. The people of a town and county where a bridge is situated have an interest in it, and derive a benefit from it, greater in degree than the rest of the community, according to their local position, and may, therefore, on general principles of justice, be required to contribute a larger share towards its erection and support. The possibility that such a power may be abused, has but a slight tendency to prove that it does not exist. There are a variety of other cases, in which it would be easy to suggest a possible gross abuse of legislative powers, but in which there can be no possible question of the existence of the power itself, under the express provisions of the constitution."

> "The legislature has power to pass an act providing that a turnpike shall be laid out as a highway, and that the supreme judicial court shall appoint commissioners to esti-

mate and award the amount to be paid as damages for taxing the property of the company, and to determine and decree in what proportions this amount shall be paid by the counties in which the turnpike lies. Hingham & Q. Br. & T. Co. *vs.* Norfolk Co., *supra*. Where the constitution has interposed no obstacles, the legislature may impose the burden of taxation for constructing a road for state purposes upon a district to be constituted for the purpose. People *vs.* Lawrence, *supra*. The state may impose the burden of constructing a road for state purposes where, in its wisdom, it is considered that it ought to rest."

Desty on Taxation, 279.

II.

The power of the General Assembly to form a bridge district like the one in question, and provide for the issue and payment of bonds for the construction of a public bridge, is in no way limited by the Federal or State Constitution. The legislature is the sole judge of benefits and assessments and methods of payment.

"*The legislature may authorize commissioners to construct roads, and to require the issue of bonds to pay therefor.*"

Desty on Taxation, 280.
People *vs.* Flagg, 46 N. Y., 406.

"The power of the legislature to impose local taxation is deducible from the general powers of the government."

Desty on Taxation, 281.
Slack *vs.* Railroad, 13 B. Mon., 28.

"The legislature has power to impose a tax on a local district for the construction of local improvements."

Desty on Taxation, 282.
Williams *vs.* Cammack, 27 Miss., 210; Alcorn *vs.* Hamer, 38 Miss., 652; Daily *vs.* Swope, 47 Miss., 367.

"Assessments made for benefits conferred are a valid exercise of the taxing power."

Desty on Taxation, 282.
State *vs.* St. Louis, 62 Mo., 244.

"The legislature has authority to lay and assess taxes to raise money for a public object on a particular town, district, or section which may reasonably be expected to derive some peculiar or special advantage or benefit from an expenditure of money which will not be enjoyed to the same degree by other portions of the state, Merrick *vs.* Inhab. of Amherst, 12 Allen, 504; Marks *vs.* Pardue Univ., 37 Ind., 155; or it may provide that a portion of the expense be borne by the whole county and a portion by a town; Norwich Inhab. *vs.* Hampshire Co., 13 Pick., 60; or that the whole expense be borne by the town, Hingham & Q. Br. & T. Co. *vs.* Norfolk Co., *supra*."

Desty on Taxation, 283.

"So a special tax may be levied on property in a precinct to repair and maintain a bridge across the river, Shaw *vs.* Dennis, 5 Gilman, 405.

"The legislature can, by mandatory act, compel a county to levy taxes and incur debts and obligations for the construction and maintenance of a way or bridge within the limits of another county, where the purpose is not only public but the object is at the same time local and of special and peculiar interest to the people sought to be taxed."

Desty on Taxation, 284, 285.
Talbot Co. *vs.* Queen Anne's Co., 50 Md., 245.
Thomas *vs.* Leland, 24 Wend., 65.
In Com. *vs.* Newburyport, 103 Mass., 129.

"*In creating a taxing district the legislature may appoint the officers provisionally, to be succeeded by officers duly elected by the qualified voters of the district.*"

Desty on Taxation, 277.
Luehrman *vs.* Taxing District, 2 Lea, 425; People *vs.* Hurlbut, 24 Mich., 44.

"The power to levy taxes may be delegated by the legislature to commissioners or any other agents, and when the legislature provides for a tax by any agency whatever, it is, in contemplation of the Constitution, the act of the people."

Desty on Taxation, 277.
Baltimore *vs.* State, 15 Md., 376.

In the case of Mobile County *vs.* Kimball, 102 U. S., 243, Mr. Justice Field says:

"The Act of February 16, 1867, created a Board of Commissioners for the improvement of the river, harbor, and bay of Mobile, and required the president of the commissioners of revenue of Mobile County to issue bonds to the amount of $1,000,000, and deliver them, when called for, to the board, to meet the expenses of the work directed. The board was authorized to apply the bonds, or their proceeds, to the cleaning out, deepening, and widening of the river, harbor, and bay of Mobile, or any part thereof, or to the construction of an artificial harbor in addition to such improvement." . . . p. 696.

"The objection to the Act here raised is different from that taken in the state court. Here the objection urged is that it fastens upon one county the expense of an improvement for the benefit of the whole state. Assuming this to be so, it is not an objection which destroys its validity. When any public work is authorized, it rests with the legislature, unless restrained by constitutional provisions, to determine in what manner the means to defray its cost shall be raised. It may apportion the burden ratably among all the counties, or other particular subdivisions of the state, or lay the greater share or the whole upon that county or portion of the state specially and immediately benefited by the expenditure.

"It may be that the Act in imposing upon the County of Mobile the entire burden of improving the river, bay, and harbor of Mobile is harsh and oppressive, and that it would have been more just to the people of the county if the legislature had apportioned the expenses of the improvement, which was to benefit the whole state, among all its

counties. But this court is not the harbor in which the people of a city or county can find a refuge from ill-advised, unequal, and oppressive state legislation. The judicical power of the Federal Government can only be invoked when some right under the Constitution, laws, or treaties of the United States is invaded. In all other cases, the only remedy for the evils complained of rests with the people, and must be obtained through a change of their representatives. They must select agents who will correct the injurious legislation, so far as that is practicable, and be more mindful than their predecessors of the public interests." . . . p. 704.

"It only says that the board was created by the General Assembly of the state, and was not an agent *appointed* by the County of Mobile. It does not state that the board was not an agent of the county, but only that its appointment was not from the county, and that it drew its existence and authority from the statute of the state. It is not necessary, to constitute an agency of a political subdivision of a state, that its officials should be elected by its people or be appointed with their assent. It is enough to give them that character that, however appointed, they are authorized by law to act for the county, district, or other political subdivision. Here, the harbor board, created by a law of the state, was authorized to make contracts for a public work in which the county was specially interested, and by which it would be immediately and directly benefited, and to require obligations of the county to meet the expenses incurred. It is a mere battle of words to contend that it was, or was not, an agent of the county because its members were appointed by some exterior authority. It is enough in this case that by force of the law of its creation it could bind the county for work which it contracted." . . . p. 706.

We also quote from The People *ex rel. vs.* Flagg *et al.*, 46 N. Y., 405, as follows:

"The legislation involved in this case is challenged upon the ground that it is not competent for the legislature to

compel the town of Yonkers to incur a debt for the improvements authorized to be made. It is conceded that the legislature could direct the improvements to be made, and could lawfully impose a tax upon the property of the citizens of the town to pay the necessary expenses, or that it might authorize a town debt to be created, with the consent of the people of the town, or some officer or officers representing the municipality; but that it cannot directly compel the creation of the debt without the consent of the citizens or town authorities.

"All legislative power is conferred upon the Senate and Assembly; and if an Act is within the legitimate exercise of that power it is valid, unless some restriction or limitation can be found in the Constitution itself. The distinction between the United States Constitution and our State Constitution is that the former confers upon Congress certain specified powers only, while the latter confers upon the legislature *all* legislative power. In the one case the powers specifically granted can only be exercised. It cannot be denied that the subject of the laws in question is within legislative powers. The making and improvement of public highways, and the imposition and collection of taxes are among the ordinary subjects of legislation. The towns of the state possess such powers as the legislature confers upon them. They are a part of the machinery of the state government and perform important municipal functions which are regulated and controlled by the legislature. Private property cannot be taken for public use without compensation. But this principle does not interfere with the right of taxation for proper purposes. The legislature, in substance, directed certain highways to be made and constructed in the town of Yonkers and imposed a tax upon the town to pay the expense of the work, but to prevent too large a tax at one time, it directed bonds to be given, payable at different periods, so that no more than a limited sum should become due at one time.

"The bonds to be given are town bonds; they are to be issued by town officers and the tax to pay them is imposed upon the property of the town. If the legislature may

authorize the town to incur this debt, why may it not direct it to be done? As a question of power, I am unable to find any restriction in the Constitution. It is not within the judicial province to correct all legislative abuses."

"In the laying out of a bridge as a highway by county commissioners under the St. of 1868, c. 309, § 8, and according to the provisions of the St. of 1867, c. 296, § 4, that they should 'determine and fix the relative proportions of expense for maintaining' the bridge, 'to be borne by said county and any of the cities or towns lying near to, or contiguous to' the bridge, 'as in their judgment may be just and equitable, which said proportion of expense so determined' 'shall become obligatory upon said county and upon said cities and towns as aforesaid to pay in the manner and at the times prescribed by said county commissioners,' the commissioners were authorized, but not required, to impose part of the expense for maintaining the bridge upon the county or upon the cities and towns lying near but not contiguous to the bridge, and might lawfully impose the whole maintenance of the bridge on the several towns or cities within which it was situated, and determine and fix the relative proportions in which they should respectively bear the expense thereof by assigning to each a specific part of the bridge to be maintained by it exclusively."

Commonwealth *vs.* City of Newburyport, 103 Mass., 129.

III.

Statutes regulating the construction and maintenance of highways and bridges are in no sense contracts with the town affected. Towns cannot acquire vested rights under such laws, and the power of the legislature to change and redistribute these public burdens has always been conceded.

In Scituate *vs.* Weymouth, 108 Mass., 130, the court says:

"It is too well settled to be disputed that it is within the constitutional power of the legislature to make laws for the construction, support, and maintenance of roads and bridges and for the distribution among the counties and towns of the burdens of maintaining them; and this power may be exercised by the legislature, in its discretion, either by general or special laws. It is clear also that it is competent for the legislature to delegate to commissioners the authority to determine the amount or share of these burdens which shall be borne by the several counties or towns. Salem Turnpike & Chelsea Bridge Co. *vs.* Essex, 100 Mass., 282. Hingham & Quincy Bridge & Turnpike Co. *vs.* Norfolk, 6 Allen, 353. Attorney-General *vs.* Cambridge, 16 Gray, 247. Harwich *vs.* County Commissioners, 13 Pick., 60. In the exercise of this power the legislature passed the St. of 1862, c. 177, under which the town of Weymouth now claims and which has been held by the court to be constitutional and valid. Hingham & Quincy Bridge & Turnpike Co. *vs.* Norfolk, 6 Allen, 353. That statute, so far as regards the maintenance of the bridges, was not in any sense a contract with the towns affected by it. It was an exercise of the authority of the legislature to distribute public burdens and duties. *It is clear that under the same constitutional power it had the right to change the law and redistribute these public burdens* if, from a change of circumstances or other reasons, it deemed it just and proper so to do. Cambridge *vs.* Lexington, 17 Pick., 222. Attorney-General *vs.* Cambridge, 16 Gray, 247.

"The obligation of the town of Weymouth under the Act of 1862 was not founded upon any contract, express or implied. It did not acquire any vested right to require of the other towns the contribution towards the expenses of maintaining the bridges fixed by that Act."

In Inhabitants of Brighton *vs.* Wilkinson & others, 2 Allen (Mass.), 27:

"The clause in St. 1824, c. 15, 'to authorize the proprietors of West Boston bridge to establish a turnpike road

from Cambridge to Watertown,' which provides that 'neither the towns of Watertown, Cambridge, or Brighton shall ever be compelled to support any part of said road or bridge without their own consent,' *is not in the nature of a contract between the Commonwealth and those towns that they shall be forever exempt from the burden of maintaining a highway over the land included within the limits of the turnpike road*; and St. 1859, c. 136, to establish as a highway a part of the turnpike road from Cambridge to Watertown,' is constitutional and valid."

In Carter *vs.* Bridge Proprietors, 104 Mass., 236:

"The general rule that laws [and highways shall be maintained by the counties and towns within which they are situated originated in the legislature, and the power that established it may repeal or modify it. As a general rule it may be substantially convenient and equitable, and either convenience or justice may require that it shall not be inflexible. The discretionary power of the legislature in the distribution of public burdens of this character has been for a long time recognized by this court."

In Att'y-Gen. *vs.* City of Cambridge, 16 Gray (Mass.), 247:

"A statute authorizing county commissioners to lay out as a public highway a bridge originally established by the legislature over a navigable stream, and used as a public way for two hundred years, during which period the legislature has from time to time imposed upon various towns the expense of keeping the bridge in repair, and releasing from their obligation some of the towns upon which the duty and expense of maintaining it has been imposed by previous statutes, is constitutional; and leaves it the duties of the towns not released to maintain the bridge until the exercise by the county commissioners of the authority conferred upon them, even after their refusal, upon petition, to lay out the bridge as a public highway."

In Agawam *vs.* Hampden, 130 Mass., 530, the court says:

"The counties, towns, and cities into which the commonwealth is divided are strictly public corporations, established

for the convenient administration of government: *their municipal powers and duties are not created and regulated by contract, express or implied, but by acts passed by the legislature from time to time, according to its judgment of what the interests of the public require; and they have not the same rights to judicial trial and determination, in regard to the obligations imposed upon them, as other corporations and individuals have.*" Freeland *vs.* Hastings, 10 Allen, 570, 579, 580. Rawson *vs.* Spencer, 113 Mass., 40, 45. Stone *vs.* Charlestown, 114 Mass., 214, 223, 224. Coolidge *vs.* Brookline, 114 Mass., 592, 596, 597. Hill *vs.* Boston, 122 Mass., 344, 349, 355–357. Laramie *vs.* Albany, 92 U. S., 307. Tippecanoe Commissioners *vs.* Lucas, 93 U. S., 108, 114. New Orleans *vs.* Clark, 95 U. S., 644, 654.

"It is accordingly well settled that the legislature may enact that a particular road or bridge shall be a public highway, or may direct it to be laid out as such by county commissioners, and, in either case, may order the cost thereof, including the compensation to be made to owners of land, or to corporation by which the way or bridge has been previously laid out as a turnpike or toll-bridge under a legislative charter, as well as the cost of maintaining it and keeping it in repair, to be paid either by the *commonwealth or by the counties, cities, or towns in which it lies, or which may be determined by commissioners appointed for the purpose by the courts, to be specially benefited thereby.*"

"The policy of this state has always been to impose upon towns the duty and burden of building and maintaining all necessary highways and bridges within their respective limits, except where such duty belonged to some particular person. Necessary bridges between towns are to be built and maintained at their equal expense." New Haven & Fairfield counties *vs.* Milford, 64 Conn., 573.

"But it is not found necessary for us to decide finally on this first and more doubtful question, as our opinion is clearly in favor of the defendant in error on the other question, *viz.*: that the parties to this grant did not by their charter stand in the attitude towards each other of making a contract by it, such as is contemplated in the constitution, and as could not be modified by subsequent legislation. The legislature was acting here on the one part, and public municipal and political corporations on the other. They were acting, too, in relation to a public object, being virtually a highway across the river, over another highway up and down the river. From this standing and relation of these parties, and from the subject matter of their action, we think that the doings of the legislature as to this ferry must be considered rather as public laws than as contracts. They related to public interests. They changed as those interests demanded. The grantees likewise, the towns being mere organizations for public purposes, were liable to have their public powers, rights, and duties modified and abolished at any moment by the legislature.

"They are incorporated for public, and not private objects. They are allowed to hold privileges or property only for public purposes. The members are not shareholders, nor joint partners in any corporate estate, which they can sell or devise to others, or which can be attached or levied on for their debts.

"Hence, generally, the doings between them and the legislature are in the nature of legislation rather than compact, and subject to all the legislative conditions just named, and therefore to be considered as not violated by subsequent legislative changes.

"It is hardly possible to conceive the grounds on which a different result could be vindicated without destroying all legislative sovereignty and checking most legislative improvements and amendments as well as supervision over its subordinate public bodies." The Town of East Hartford *vs.* The Hartford Bridge Company, 10 Howard, 533.

"In Scituate *vs.* Weymouth, *supra*, it was held that, after the legislature had laid out a turnpike and toll-bridge as a public highway, and imposed the expenses of repairing and maintaining it upon such towns as commissioners appointed by this court should determine to be specially benefited, and the award of such commissioners, determining that seven towns named were so benefited, and should bear such expenses in certain proportions, had been accepted by the court, *a subsequent legislature might enact that such expenses for the future should be borne by such towns as commissioners appointed by the Governor should determine to be benefited*; and that the award of commissioners so appointed, determining that the whole of such expenses for the future should be borne by three of those towns only, was valid."

Agawam *vs.* Hampden, 130 Mass., 531.

IV.

The respondent town is "specially benefited" by the highway and bridge in question.

After finding the preliminary facts necessary to give jurisdiction, the commissioners in 1887–89 laid out and established this highway, which included the bridge and causeway, and then found "That the towns of Hartford, East Hartford, Glastonbury, South Windsor, and Manchester will be specially benefited by the layout and establishment of such free highway."

The court accepted the report of the commissioners, and approved and confirmed the layout and the finding of the commissioners that said towns, including the respondent town, were specially benefited thereby. See Record, pp. 8–14.

The decree of the Superior Court, ordered as it was after formal hearing, in which hearing the present parties, *i. e.*,

the state and the respondent town were parties, is conclusive and final as an adjudication on the question of benefits, and is as binding on the respondent as when it was first entered on the records of the court.

"*The decision of a court of competent jurisdiction is final and conclusive upon the parties, and as to the title claimed under it.* Rose *vs.* Himely, 4 Cranch, 241; Gelston *vs.* Hoyt, 3 Wheat., 315.

And a fact which has been directly tried and determined, by a court of competent jurisdiction, cannot be again contested between the same parties, in the same court or any other. Hopkins *vs.* Lee, 6 Wheat., 113; Elliott *vs.* Peirsol, 1 Pet. R., 34.

If a decree thereon is in legal form, it is complete evidence of its own validity. Spratt *vs.* Spratt, 4 Pet. R, 48.

Where the court has a peculiar and exclusive jurisdiction, its decree is binding upon the judgment of any other court, in which the same subject comes immediately into controversy."

Holcomb *vs.* Phelps, 16 Conn., 132.

> "If an issue, as distinguished from a collateral or evidentiary matter, has been finally decided by a competent judicial; if it was directly and not merely collateral, nor incidentally involved; and if it was material and contested, the adjudication, as between the contesting parties and their respective powers, will bar a new contest of the same issue in another judicial proceeding involving a different subject matter."
>
> Van Fleet's Former Adjudication, Vol. 1, p. 603.

In Ashton *vs.* Rochester, 133 New York, 187:

> "True, this is not a general tax, but a special and local assessment. But it is nevertheless an exercise of the taxing power; and its validity, as well as the right of the plaint-

iffs to question or assail it in the courts, rests on the same principles as are applicable to an assessment or tax for general purposes. If the expense of the improvement was to be paid out of the city treasury, there would then be little doubt that an adjudication upon an application for a mandamus, involving, as this did, the validity of the proceedings up to that time, would have bound all the taxpayers. Is the rule any different if a small part, or even the whole of the expense, is to be paid by the property-owners within a certain district? Is the principle changed because the area over which the tax was distributed is contracted? The executive board laid the matter on the table, and, in effect, refused to act, treating the resolution as rescinded, by the common council. They were brought into court, and the very question involved was whether or not the board had authority to contract for the execution of the work; and the court held, upon full argument and against the contention of the board, that they had. The question was whether or not they had power, under the proceedings, to make a contract and incur an expense, which was to be paid by the property-owners; and it was adjudged that they had, and that it was their duty to do so. When the executive board was before the court on this application, they represented and spoke, not only for themselves and the city, but also the property-owners who were to be bound by the contract, and whose property was to be assessed for the expenditure which the work embraced in the contract involved. When the court directed the board to make the contract, the effect of its judgment was to direct the imposition of a tax upon the plaintiff's property. On that question the plaintiffs could have been heard, and, on their application, were entitled to a hearing and to be made parties to the proceeding, and to appeal from the decision. The executive board, in making the contract and supervising the work, acted, in a certain sense, as the agents of the property-owners, and therefore, the judgment of the court, that the resolution of the common council was still in force, not only bound the agents, but the parties they represented, as well."

There is no force to the claim that the decree of 1889 is inadmissible under the pleadings as proof of special benefits. It is embodied in the mandamus not only as descriptive of the highway, but as a *part of the complaint*, in which it is claimed that it was the duty of the respondent to honor the order of the commissioners. And the relators are as clearly entitled to the full force of this judicial finding, as they are to the Act of 1895, which is based upon it, follows it, and refers to it.

This act takes up and follows the adjudication of 1889 and the decree of the Superior Court, in which it is found and adjudged that Glastonbury is specially benefited. The question then raised was precisely the same as the question now in issue, and between the same parties. The state then undertook to place the support of this highway upon these same towns. The towns appeared, were heard, and no exception was taken to the jurisdiction of the court or to the constitutionality of the act. Judgment was recorded, and no appeal or review was instituted. As far as the claim may have any bearing upon the case, it is *res adjudicata*.

V.

The decree of 1889 and its effect as proof of special benefits is not necessary to the relators in this case, because the General Assembly has power to order a locality or district to construct and maintain a public bridge or highway, and the proportion to be paid by each municipality cannot be reviewed by the courts.

We have cited many cases which support this principle in discussing the general powers of the legislature, and we here cite one more directly in point:

> "The power of apportionment is included in the power to impose taxes, and is vested in the legislature; and in

the absence of any constitutional restraint, the exercise by it of this power cannot be reviewed by the courts

"Where a tax is imposed upon a particular locality to aid in a public purpose, which the legislature may reasonably regard as a benefit to that locality, as well as to the state at large, inequality in the apportionment of the expenses of the undertaking, with reference to the benefits resulting to the state and the locality, cannot be alleged for the purpose of impugning the validity of the act." Gordon *vs.* Cornes, 47 N. Y., 608.

Glastonbury is so situated geographically that the bridge in question is not only a benefit, but an absolute necessity. Electric cars run from Hartford to Glastonbury across this bridge and highway many times every day. The ordinary daily commerce of the four towns situated on the east side of the river, included in the district taxed, depends almost entirely upon the facilities for transportation afforded by the bridge. The commission appointed in 1887 to assess benefits, after a most careful and exhaustive hearing, found that Glastonbury would be benefited to the extent of 25/210 of the sum required to enfranchise the bridge. It may well be presumed that the General Assembly of 1895 took these and many other circumstances into consideration, and the geographical situation of the respondent, of which this court may take judicial cognizance, is conclusive evidence of benefits largely in excess of the burden imposed by the act in question; and we insist that the discretion of the legislature in such cases is not subject to modification or control by the courts. The courts have passed upon this question many times in our own and other states, and the constitutional restrictions relied upon by the respondent have no application whatever to the case at bar.

VI.

The Contract with The Berlin Iron Bridge Co.

The alleged contract between the State of Connecticut and The Berlin Iron Bridge Company was clearly illegal and ultra vires.

The Act of 1893 should be fairly construed in the light of the language used, and its manifest intent and purpose.

This act distinctly limits the liability of the state to the maintenance of the bridge or bridges then existing:

> "Section 1. The highways across the Connecticut River at Hartford, where the *present* bridges now are . . . . together with *said* bridges, shall hereafter be maintained," etc., and in Section 2, "the expense of repairing and maintaining *said* bridges — *present bridges* — shall be incurred by said board," etc.; and again in Section 3, "The Governor shall appoint three commissioners, who shall constitute a board for the care, maintenance, and control of *said* . . . . bridges."

Let us give to this language, however, the freest and widest scope possible, and see if it confers the powers assumed by the commissioners of 1893. "*Said*" bridge was to be repaired and maintained by the state, and we will assume that maintain and build are easily synonymous. The state then must maintain and "rebuild," if necessary, "*said*" bridge. It is clear that neither the act nor the men who voted for it anticipated or intended the rebuilding of this bridge; still if the word maintain was adroitly used by certain gentlemen, who did intend to have a new bridge immediately, and its full scope escaped the attention of the law-makers, for the purpose of the argument we will write between the words "maintain" and "said" the words, "rebuild and reconstruct." We have then put in all that the eager friends of

the bill dared to hope for, when they blindfolded the innocent legislator with the word "maintain," and we cannot be asked to erase the word "said," for it is used five times in the act, and is the only word used in designating the particular structure to be maintained at the expense of the state. Not *a* bridge, but "*said*" bridge shall be maintained and "rebuilt" (?), if necessary, at the expense of the state.

That the commissioners were thus limited by the act in its widest and freest construction is clear, and the law controlling such agencies is not less clear and imperative. The state, at the most, agreed to bind her treasury to pay for the cost of maintaining, "rebuilding" (?), if necessary, *said* bridge; *said* bridge was a wooden structure, 24 feet wide —barely wide enough for two carriage-ways — and could easily have been rebuilt for $80,000. What was the state bound to do? As much and no more than would be required of an individual under similar circumstances. The commissioners, acting for the state, could not exceed the authority of the act. An agent has no power to bind his principal outside the scope of his authority. One illustration is sufficient: Suppose the bridge had remained a toll-bridge, and an individual had agreed with the company owning the bridge that for a certain percentage of the tolls he would maintain and repair the bridge, and rebuild the same if destroyed. In an action upon that agreement, would the courts say that he was bound to build an ornate steel structure of twice the capacity and four times the cost?

> "Parties dealing with an agent known by them to be acting under an express power, whether the authority conferred be general or special, are bound to take notice of the nature and extent of the authority conferred. They must be regarded as dealing with that power before them, and are bound at their peril to notice the limitations thereto prescribed, either by its own terms or by construction of law." Mechem on Agency, § 274.

"And this rule is particularly true in the case of public agents. Here the authority is a matter of public record, or of public law, of which every person interested is bound to take notice; and there is no hardship in confining the scope of such an agent's authority within the limits of the express grant and necessary implication. The fact that the same act might have been within the scope of the authority if created by a private individual is not conclusive.

"Thus in a case involving the validity of a contract made by the city commissioner of Baltimore, the court said: 'Although a private agent, acting in violation of specific instructions, yet within the scope of general authority, may bind the principal, the rule as to the effect of a like act of a public agent is otherwise. The city commissioner was the public agent of a municipal corporation, clothed with duties and powers specially defined and limited by ordinance bearing the character and force of public laws, ignorance of which can be presumed in favor of no one dealing with him on matters thus conditionally within his official discretion. For this reason, the law makes a distinction between the effect of the acts of an officer of a corporation and those of an agent of a principal in common cases. In the latter the extent of the authority is known only to the principal and agent, while in the former it is a matter of record in the books of a corporation or of public law.'" Mechem on Agency, § 292.

"Express grants of power to public officers are usually subjected to a strict interpretation, and will be construed as conferring those powers only which are expressly imposed or necessarily implied.

"Such an officer, therefore, can create rights against the state, or other public authority represented by him, only while he is keeping strictly within the limits of his authority as so construed.

"So it is well settled that when such officers undertake, by virtue of the authority conferred upon them, to build up rights against such third persons, the limits and condi-

tions imposed upon their authority must be rigidly observed, or their acts will be unavailing." Mechem on Public Offices and Officers, § 511.

"The fact that a given act might have been deemed to be within the scope of the authority if created by a private individual is not conclusive. Thus in a case involving the validity of a contract made by the city commissioner of Baltimore, the court said: 'Although a private agent, acting in violation of specific instructions, yet within the scope of a general authority, may bind his principal, the rule as to the effect of a like act of a public agent is otherwise. The city commissioner was the public agent of a municipal corporation, clothed with duties and powers specially defined and limited by ordinances bearing the character and force of public laws, ignorance of which can be presumed in favor of no one dealing with him on matters thus conditionally within his official discretion. For this reason the law makes a distinction between the effect of the acts of an officer of a corporation and those of an agent for a principal in common cases. In the latter the extent of authority is necessarily known only to the principal and agent while in the former it is a matter of record in the books of the corporation or of public law.' Mayor *vs.* Eschbach, 18 Md., 282.

"In respect to the acts and declarations and representations of public agents it would seem that the same rule does not prevail which ordinarily governs in relation to mere private agents. As to the latter the principals are in many cases bound where they have not authorized the declarations and representations to be made. But in cases of public agents the government or other public authority is not bound, unless it manifestly appears that the agent is acting within the scope of his authority or he is held out as having authority to do the act or is employed in his capacity as a public agent to make the declaration or representation for the government. Indeed, this rule seems indispensable in order to guard the public against losses and injuries arising from the fraud or mistake or rashness and indiscretion of their agents. And there is no hardship in

requiring from private persons dealing with public officers the duty of inquiring as to their real or apparent power and authority to bind the government.'" U. S. *vs.* Doherty, 27 Fed. Rep., 730.

"Individuals must take notice of the extent of the authority of an officer. The government is not bound by an act of its agent unless within the scope of his authority or he had been held out as having authority to do the act." Hawkins *vs.* United States, 96 U. S., 689. Whiteside *vs.* United States, 93 U. S., 247.

"The government does not guarantee the integrity of its officers or the validity of their acts. They are but the servants of the law and if they depart from its requirements the government is not bound." Moffat *vs.* United States, 112 U. S., 24.

"The government is not liable to individuals for the misfeasance, laches, or unauthorized exercise of power by its officers and agents." Gibbons *vs.* United States, 8 Wall., 269.

"Unauthorized acts of officers cannot estop the government from insisting upon their invalidity, however beneficial they may have proved to the United States." Filor *vs.* United States, 9 Wall., 45. Machem on Public Officers, § 512.

The contract was clearly illegal and *ultra vires* when the statute is given all the length and breadth desired by the respondent, but now let us look at the actual legal strength of this word "maintain." In the first place it will be observed that it has never been used by the General Assembly except in the sense of repair and it always pertains to structures already in existence. See Secs. 2670 and 2672 in which the word "maintain" is used in its proper sense. The dictionaries give it this and no additional force and the courts have long since decided that the words maintain and build are of entirely different meaning and that maintain as applied to existing structures never requires them to be rebuilt.

"*Two things are indicated too plainly by the language to admit of confusion; to build or construct a railroad is one*

thing: to maintain the structure after it is built is another. The word 'maintenance' has reference to the powers to be exercised after completion. This is the natural force of the expression: any other meaning is unnatural and could not be inferred by the language of the act without departure from the common acceptance of the words of the section and without the least excuse for the departure." Moorehead vs. Little Miami R. R. Co., 17 Ohio, p. 353.

Will this court go beyond the language of the law and the intent of the parties and lay down the rule that the word maintain when applied to an existing structure requires a rebuilding, not of a similar structure, but such a structure as shall suit the taste of the contractor regardless of expense.

If we look at the bridge called for by the alleged contract printed in the record we will see that it requires a structure no more like the one that was to be maintained than the present Capitol building is like either of its predecessors, and we insist that as the act merely gives the commissioner the power to maintain a certain existing structure, *said bridge*. The hasty signing of this astounding compact, whereby the people of Connecticut were bound to provide an ornamental, steel viaduct, for the accommodation of railroads as well as the ordinary public uses at an expense of $400,000, was an insult to the General Assembly and was clearly void, and the fact that such things are possible renders it doubly important that some reasonable restriction be put to the discretion of state agents in the exercise of their ever increasing opportunities to assail the treasury of the state.

VI.

But we will assume for the sake of argument that the bridge company had a contract with the state.

This contract cannot be taken advantage of by the respondent in this or any other proceeding.

We ought perhaps to state at the outset that we should have demurred to that part of the return which seeks to take advantage of this contract as a special defense, but for the fact that the denials and the special matters set up by the respondents rendered it impossible. The denial by the respondent of the allegation now admitted that the money called for by this order was expended on the causeway east of the bridge proper and forming no part of the bridge structure or the approaches thereto could not be allowed to stand, and inasmuch as the constitutional objections, based upon an alleged violation of the contract with the Bridge Company, whatever force they may once have had, have since been utterly lost to the respondent by the discharge and surrender of the contract to the state and full payment and satisfaction of all claims by whomsoever made on account of the same: it seemed to the relators in view of the great inconvenience that must be suffered by thousands of people living in the bridge district until the powers of the relators with regard to the bridge structure proper have been judicially announced it was their duty, as far as possible, to submit to this court the present state of this contract, otherwise the main reliance of the respondents would be passed as not affecting the particular order in question but might be left to affect subsequent orders calling for funds to defray the expense of constructing a new bridge.

The relators are therefore willing, and, as far as agreement of parties can avail, we have tried to give to this court for their determination everything that can be shown in support of the claim that the commissioners are acting under an unconstitutional and voidable act, in all or any of its provisions.

We think it will be immediately noted by this court that the claims of the respondent in this regard, as set forth in paragraphs 6, 7, 8, 9, and 14 of the reasons of appeal, have no legal force whatever.

If the court finds that the alleged contract was *ultra vires* and illegal, as the relators maintain, then the constitutional

questions, which the respondents have struggled so hard to raise, are at once eliminated from the case.

If this court finds the contract was once valid the relators insist that the respondent is too far from it to take advantage of the points raised, and that if near enough to it to stand with it in court, the respondent also falls with it when it falls.

The acts of 1895 *do not in any way violate the obligations of this contract.*

If the acts of 1895 *do abrogate the contract, The Berlin Iron Bridge Company is the only party whose complaint can be heard by the courts.*

The contract having been surrendered and canceled by the party in whose benefit it was written, the act stands as valid and constitutional in every respect as though the contract had never existed.

All public or private acts are presumed to be constitutional and are voidable only, and if the party aggrieved by an unconstitutional provision acquiesces in its operation, he waives his right to question its validity and the law operates as to all parties from the date of its passage.

First let us look at the act itself. Record, pp. 82–84.

Here we find a complete protection of the contract with the bridge company. The company if they wish to surrender it may do so and receive full compensation and reinbursement for all expenses and losses incurred under it, or the company may have the question of its validity determined by the courts and the state must abide the result. If found valid the company shall build the new bridge and the state pay for it to the last dollar.

It is well settled that changes in the forms of action and modes of proceeding do not amount to an impairment of the obligations of a contract, if an adequate and efficacious remedy is left. This limitation upon the prohibitory clause of the constitution in respect to the legislative power of the states over the obligations of contracts, was suggested by Chief Justice Marshall in Sturges *vs.* Crowninshield, 4 Wheat., 200, 207, and has been uniformly acted on since.

Cooley Const. Lim., 5th Ed., 349.
Mason *vs.* Haile, 12 Wheat., 378.
Bronson *vs.* Kinzie, 1 How., 316.
Von Hoffman *vs.* City of Quincy, 4 Wall., 553.
Drehman *vs.* Stifle, 8 Id., 602.
Gunn *vs.* Barry, 15 Id., 623.
Walker *vs.* Whitehead, 16 Wall., 317.
Terry *vs.* Anderson, 95 U. S., 633.
Tennessee *vs.* Sneed, 96 Id., 69.
Louisiana *vs.* Pilsbury, 105 Id., 301.

As was very properly said by Mr. Justice Swayne in Von Hoffman *vs.* City of Quincy, *supra*:

> It is competent for the states to change the form of the remedy, or to modify it otherwise, as they may see fit, provided no substantial right secured by the contract is thereby impaired. No attempt has been made to fix definitely the line between alterations of the remedy, which are to be deemed legitimate and those which, under the form of modifying the remedy, impair substantial rights. Every case must be determined upon its own circumstances. Whenever the result last mentioned is produced, the act is within the prohibition of the constitution and to that extent void.
>
> In all such cases the question becomes, therefore, one of reasonableness, and of that the legislature is primarily the judge.

See also

Munn *vs.* Ill., 94 U. S., 132.
Jackson *vs.* Lamphire, 3 Pet., 290.
Cooley Const. Limitations, p. 443.

We have nothing to do with the motives of the legislature, if what they do is within the scope of their powers under the Constitution.

It will be observed that the state by the acts complained of, so far as they affect this contract, protect it, if valid.

VII.

It must be conceded that the state may by public act interfere with a contract entered into by her agents without authority, and whether void or valid, if the party claiming under it cancels and surrenders it to the state for a valuable and good consideration and expressly waives all rights which he might otherwise have had to question its validity.

The act is left to operate in all other respects as though the contract had never existed.

> "A party may renounce a constitutional provision made for his benefit and a law therefor, which provides for the transfer of property from one individual to another, *with the consent of the owner*, is not unconstitutional.
>
> "The provision in the act relating to the city of New York which authorizes the commissioners of estimate and assessment to include in their assessment the whole of a lot when part only is required for the use of the street and vesting the title to the whole in the corporation, should, it seems, be so read and construed as to require the consent of the owner to the appropriation of the part not required for the public use, and therefore it is not unconstitutional."

Embury *vs.* Conner, 3d N. Y., 511.

This doctrine is reaffirmed in Detmold *vs.* Drake *et al.*, 46 N. Y., 318.

> "The statute is assumed to be valid until some one complains whose rights it invades. *Prima facie*, and upon the

face of the act itself, nothing will generally appear to show that the act is not valid ; and it is only when some person attempts to resist its operation, and calls in the aid of the judicial power to pronounce it void, as to him, his property, or his rights, that the objection of unconstitutionality can be presented and sustained. Respect for the Legislature, therefore, concurs with well-established principles of law in the conclusion that such an act is not void, but voidable only ; and it follows as a necessary legal inference from this position, that this ground of avoidance can be taken advantage of by those only who have a right to question the validity of the act, and not by strangers. To this extent only is it necessary to go, in order to secure and protect the rights of all persons against the unwarranted exercise of legislative power, and to this extent only, therefore, are courts of justice called on to interpose."

Cooley Const. Lim., 5th Ed., p. 197.
Wellington, Petitioner, 16 Pick., 87, 96.
Hingham, etc., Turnpike Co. *vs.* Norfolk Co., 6 Allen, 353.
Heyward *vs.* Mayor, etc., of New York, 8 Barb., 486.
Matter of Albany St., 11 Wend., 149.

"Nor will a court listen to an objection made to the constitutionality of an act by a party whose rights it does not affect, and who has, therefore, no interest in defeating it."

Cooley Const. Lim., 5th Ed., p. 197.
People *vs.* Rensselaer, etc., R. R. Co., 15 Wend., 113.

"Any legislative act which does not encroach upon the powers apportioned to the other departments of the government, being *prima facie* valid, must be enforced, unless restrictions upon the legislative authority can be pointed out in the Constitution and the case shown to come within them."

Cooley Const. Lim., 5th Ed., p. 202.
Sill *vs.* Village of Corning, 15 N. Y., 297.
People *vs.* Supervisors of Orange, 17 N. Y., 235.

Derby Turnpike Co. *vs.* Parks, 10 Conn., 522, 543.
Hartford Bridge Co. *vs.* Union Ferry Co., 29 Conn., 210.
Holden *vs.* James, 11 Mass., 396.
Adams *vs.* Howe, 14 Mass., 340.
Norwich *vs.* County Commissioners, 13 Pick., 60.

"When a law of Congress is assailed as void, we look in the national Constitution to see if the grant of specified powers is broad enough to embrace it; but when a state law is attacked on the same ground, it is presumably valid in any case, and this presumption is a conclusive one, unless in the Constitution of the United States or of the state we are able to discover that it is prohibited."

Cooley Const. Lim., 5th Ed., page 207.

"A law might be void as violating the obligation of existing contracts, but valid as to all contracts which should be entered into subsequent to its passage, and which, therefore, would have no legal force except such as the law itself would allow."

Cooley Const. Lim., 215.

In any such case the unconstitional law must operate as far as it can,

In re Middletown, 82 N. Y., 196,

"and it will not be held invalid on the objection of a party whose interests are not affected by it in a manner which the Constitution forbids."

Cooley Const. Lim., 5th Ed., 215.

"But if I could rest my opinion in favor of the constitutionality of the law on which the question arises, on no other ground than this doubt so felt and acknowledged, that alone would, in my estimation, be a satisfactory vindication of it.

"It is but a decent respect due to the wisdom, the integrity, and the patriotism of the legislative body by which any law is passed, to presume in favor of its validity, until its violation of the Constitution is proved beyond all reasonable doubt."

Ogden *vs.* Saunders, 12 Wheat., 213.

See also

Adams *vs.* Howe, 14 Mass., 340.

"The constitutionality of a law, then, is to be presumed because the Legislature, which was first required to pass upon the question, acting, as they must be deemed to have acted, with integrity, and with a just desire to keep within the restrictions laid by the Constitution upon their action, have adjudged that it is so."

Cooley Const. Lim., 5th Ed., 219.

"The presumption always is that the Legislature has kept within the legitimate scope of its authority and except in cases, where, upon the most careful and deliberate examination, it is manifest that the true limits of legislative power have been exceeded, the act will not be pronounced void."

Williamson *vs.* Carlton, 51 Maine, 453.

"A statute will not be declared unconstitutional on the application of a mere volunteer, or person whose rights it does not specifically affect. This will only be done in a proper case where some person seeks to resist the operations of the statute and calls in the judicial power to pronounce it void as to him, his property, or his rights."

Jones *et al. vs.* Black *et al.*, 49 Miss., 541.

"If the act be unconstitutional, private parties cannot interfere by bill to have it so declared, unless on account of some damage to them; injury to the public peace or interests of the territory to be incorporated is not sufficient."

Smith *vs.* McCarthy, 50 Pa. St., 359.

VIII.

If the contract with the Bridge Company is material to this case, the claim that the relators cannot show that it had been canceled at any time before the judgment was rendered by the superior court is absurd.

The respondent town ties herself to a certain contract in which she has no interest, and insists that the obligations of this contract have been violated, but in the same breath she admits that this contract does not exist to-day, that since she set up the claim on its account it has been surrendered and canceled, and all constitutional defects in the law have been waived by the party in whose benefit it was written.

Can this town, not a party to the contract, claim more than the contracting parties might claim?

> "Facts which have occurred since the issuing of the alternative writ may be pleaded in bar of the writ."

Merrill on Mandamus, Sec. 297; and if they may be pleaded in bar of the writ *a fortiori*, they may be pleaded in bar of a special defense if they occur before issue joined or before judgment.

Merrill on Mandamus, sec. 297.

IX.

The respondents contend that the mandamus should have been brought in the corporate name of the Bridge District, and that the treasurers of all the towns should have been joined in the proceeding. (See Return, paragraph 22.)

This writ is brought in obedience to and strictly in accordance with the provisions of Chap. 343 of the Special Acts of 1895, and especially of Sec. 7 of said act, which we quote as follows:

"SEC. 7. Said commissioners are empowered to make any and all orders and to do all things necessary for the construction and improvement of said highway, and the causeway and approaches appurtenant thereto, including all bridges necessary for the safety and convenience of public travel. The orders of said commissioners shall be obligatory upon the several towns named in section one of this act, and such orders shall be sufficient authority for the treasurer of each of said towns to pay to said commission or its treasurer any sum required to be paid by the towns named in such order. Said commissioners are authorized to apply to any court of competent jurisdiction, whether of state or the United States, for and in any manner appertaining to said work, and to procure the enforcement and execution of their orders, and the courts of this state are hereby fully empowered, upon proper proceedings brought by or at the instance of said commissioners or any interested party, to enforce by mandamus or otherwise the orders of said commissioners made under authority of this resolution."

The first section of the act simply establishes the district to be taxed as a body politic and corporate, with power to sue and to be sued. Glastonbury is an integral part of the corporation so formed.

The administration of the act and the power to compel this corporation to do its duty as therein set forth, was necessarily left to some one friendly to the law, clothed with full power in the premises. Sections 2 and 3 of the act provide for the organization of the board of commissioners, and in Sec. 3 we find the following provision:

"Actions may be brought against said board by service upon its secretary, and any judgment recovered therein shall be paid by said board in the same manner as herein provided for the payment of the expenses of repairs and maintenance. Said board shall annually report to said several towns the expenses incurred and paid by them during the preceding year."

The District as a corporation is opposed to the operation of the law, and the act would have been dead at its birth, if the claims of the counsel for the towns composing the district are correct.

The power of the commissioners to apply for a mandamus to enforce the order in question is coextensive with their power to make the order. The district or corporation is the respondent. The gentlemen are not quite bold enough to say that the act intends that this corporation may sue itself, if it see fit, but such is the import certainly of paragraph 22 of their return. Towns are by law obliged to keep highways and bridges, within their limits, in good and sufficient repair. The county commissioners in the several counties may order delinquent towns to comply with the law, and they may enforce their order and compel payment of expenses incurred. So, too, railroad commissioners, insurance commissioners, dairy commissioners, factory inspectors, etc., may order certain corporations and persons to comply with the laws of the state and secure the enforcement of these orders in the courts. The law in question (Sec. 7), says in so many words:

> "The courts of this state are hereby fully empowered upon proper proceedings brought *by or at the instance of said commissioners or any* interested party to enforce *by mandamus* or otherwise the orders of said commissioners made under the authority of this resolution."

And, again:

> "Said commissioners are empowered to make any and all orders," etc.

With regard to the claim that the mandamus should have been against the treasurers of all the towns, we submit that it is no less absurd and untenable than the point we have just left. The law provides (Sec. 7):

> "The *orders* of said commissioners shall be obligatory upon the *several* towns," . . . . . "and such orders shall be sufficient authority for the treasurer of *each* of said towns to pay to said commission or its treasurer any sum required to be paid by the towns named in such order."

> "The writ must issue against him whose duty it is to do the act desired."
>
> "The relator must prove his right to all he claims in the alternative writ."
>
> "The writ may include any number of persons as respondents, if the duty is to be performed by all or by one or others. *If, however, the duties of the respondents are separate the writ will be refused.*"
>
> Merrill on Mandamus, Sec. 24.

This is not a proceeding against the five towns or the treasurers of five towns, as they have a general and corporate duty to construct and maintain a bridge. It is a proceeding brought to require S. H. Williams, treasurer, to pay $15.00 to the relators, as it is made his singular and separate duty under the law, and what the treasurers of the other towns may do or refuse to do, or be required to do, has no bearing whatever upon this purely ministerial and independent act required of the treasurer of the town of Glastonbury.

> "A mandamus, to make the trustees of two townships discharge their duties relative to a certain public road, was refused because each township acted for itself, and the duties of the respective trustees were *entirely distinct.*" Merrill on Mandamus, Sec. 234; State *vs.* Chester, 10 N. J. L., 292.

> "A mandamus was asked to compel a town and a city which had been carved out of the town to levy a tax to pay a judgment obtained on town bonds, which had been issued prior to the existence of the city. The writ was refused as to the city, because the duties of the two boards controlling the town and city were several." Merrill on Mandamus, Sec. 234a; State *vs.* Beloit, 20 Wis., 79.

There is no common or joint liability on the part of the other four towns to pay Glastonbury's share. The treasurer of the town of Hartford is as far from the reach of this proceeding in the eye of the law as is the treasurer of the town of Hartland. The treasurers of all the five towns have five separate and distinct ministerial duties to perform, five separate and distinct checks to draw. The five towns own five separate, distinct, and different sums of money to the relators. Had the five treasurers been joined as co-respondents in this application, it would clearly have been fatal to the proceedings, if it be good law that the performance of separate and distinct ministerial duties by different corporations cannot be required in the same writ.

X.

In answer to the claim advanced in section 21 of the respondent's reasons of appeal, we call attention to the following language of Judge Townsend (United States District Court for the District of Conn.):

> "Where a drawbridge over a navigable stream constitutes a part of a public highway of a town, and is under its control, it is the duty of the town to provide a proper person to take charge of it, and open it, upon notice given, for vessels to pass through." Greenwood *et al. vs.* the town of Westport, 62 Conn., 575.

The courts of the state and the legislature have always treated highways over navigable waters (which include necessary bridges) as within the provisions of the law relative to the building and maintenance of other highways. (See Secs. 2668 and 2669, G. S., Revision of 1888.) And the fact that the bed of a navigable river is the property of the state makes no difference with the situation, nor with the powers and duties of towns concerning bridges constructed across such river.

XI.

With regard to the point made in paragraph 17 of the reasons of appeal, that there is no rule or standard for determining the proportion of the expense to be paid by each town, we will simply call the attention of the court to the language of the act: "The town of Hartford seventy-nine one-hundredths, etc." Sec. 4, Chap. 343, Act 1895, Record, p. 75.

Here we have express power given to the commissioners to apportion the expense of the ordinary support and maintenance upon the five towns according to the proportion "of said towns under the provision of this resolution."

XII.

The relators are clearly entitled to the favorable judgment of this court upon every point raised in the record.

The several questions raised by the respondent in this case, though presented in good faith and with great skill, are all answered by elementary principles of law which the courts of last resort have long since put beyond change or criticism.

The act of 1893, by the terms of which the state assumed control of the East Hartford bridge, was in direct opposition to the policy of the state.

Adroitly written and adroitly passed it gave to a great municipality abundantly able to build and repair her highways special and unprecedented aid in this regard from the common treasury, leaving the poor communities with greater needs to their own resources under the general laws. It took a mile of public road in the town of East Hartford, and made it a state charge. It took one bridge from many across the same river, and if counsel for the respondent are right in their interpretation of this act, it opened the door to the state treasury and invited all the bridge-builders in the country to walk in and help themselves. It ignored every principle of justice and equality in taxation. It gave to Hartford, the wealthiest city in New England of its size, free transportation across the Connecticut river, and left the people of Enfield, Suffield, East Windsor, Windsor, Middletown, and Portland, to ford that same river, or pay toll.

The state might as properly have built a court-house, a jail, or a casino for Hartford, as this ornamental promenade across the Connecticut river.

The General Assembly of 1895 speedily and peremptorily repealed this unjust law which the respondent now clings to, and put the expense of repairing Hartford and East Hartford highways where it belongs, as long as it is made the duty of other towns in the state to repair the highways within their limits.

But the General Assembly of 1895 was most careful to save the honor of the state in her relation to the hasty and unwarranted conduct of her agents under the Act of 1893, and to pay in full all claims of The Berlin Iron Bridge Co. and all other claims made by any person on account of this invalid contract. All these claimants have been heard, and all their claims have been satisfied and discharged, and the respondent is manifestly as far from the law of 1893 and all things done under it as though it had never existed.